



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, वीरवार, 11 जुलाई, 2013/20 आषाढ़, 1935

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हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

*Shimla, the 5th July, 2013*

**No. HHC/GAZ/14-297/07.**—The High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 15 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to

order that Shri Bahadur Singh, Additional District and Sessions Judge, Sirmour at Nahan shall continue in service after attaining the age of 50 years till the next review.

By order,  
Sd/-  
*Registrar General.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**

**NOTIFICATION**

*Shimla, the 5th July, 2013*

**No. HHC/GAZ/14-297/07.**—The High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 15 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to order that Shri Krishan Kumar, Civil Judge (Senior Division)-cum-JMIC (I), Nurpur shall continue in service after attaining the age of 50 years till the next review subject to outcome of the inquiry report and without prejudice to the pending inquiry.

By order,  
Sd/-  
*Registrar General.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**

**NOTIFICATION**

*Shimla, the 5th July, 2013*

**No. HHC/GAZ/14-297/07.**—The High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 15 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to order that Shri S.L.Sharma, District and Sessions Judge, Solan shall continue in service after attaining the age of 55 years till the next review.

By order,  
Sd/-  
*Registrar General.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**

**NOTIFICATION**

*Shimla, the 5th July, 2013*

**No. HHC/GAZ/14-297/07.**—The Hon'ble High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 14 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to order that Shri K.S.Chandel, a member of the H.P.Judicial Service in the cadre of District

Judges/Additional District Judges, presently posted as Registrar (Judicial) and Judges Branch, High Court of Himachal Pradesh, Shimla, shall continue in service after attaining the age of 58 years.

The officer will now retire on his attaining the age of 60 years.

By order,  
Sd/-  
*Registrar General.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**

**NOTIFICATION**

*Shimla, the 5th July, 2013*

**No. HHC/GAZ/14-297/07.**—The High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 15 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to order that Shri Purender Vaidya, District and Sessions Judge, Kullu shall continue in service after attaining the age of 50 years till the next review.

By order,  
Sd/-  
*Registrar General.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**

**NOTIFICATION**

*Shimla, the 5th July, 2013*

**No. HHC/GAZ/14-297/07.**—The High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 15 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to order that Shri Sureshwar Thakur, Registrar (Inspection), Confidential & Budget, High Court of Himachal Pradesh, Shimla shall continue in service after attaining the age of 50 years till the next review.

By order,  
Sd/-  
*Registrar General.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**

**NOTIFICATION**

*Shimla, the 5th July, 2013*

**No.HHC/GAZ/14-297/07.**—The High Court of Himachal Pradesh in exercise of the powers vested in it under Article 235 of the Constitution of India read with Rule 15 of the H.P. Judicial Service Rules, 2004 and all other powers enabling it in this behalf, has been pleased to

order that Shri C.L.Kochhar, District and Sessions Judge, Hamirpur shall continue in service after attaining the age of 55 years till the next review.

By order,  
Sd/-  
Registrar General.

## LABOUR AND EMPLOYMENT DEPARTMENT

### NOTIFICATION

*Shimla-2, the 25<sup>th</sup> June, 2013*

**No. Sharm (A) 7-1/2005-11 (Award) L-D/Shala.**— In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court D/Shala of the following cases on the website of Labour & Employment Department:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	229/2012	S/Shri Neelam Kumari V/s M/S Sanjeev Taxtiles.	3-4-2013
2.	212/2012	Trilok Raj V/s E.E. I&PH, Chamba.	4-4-2013
3.	217/2012	Pawan Kumar V/S -do-	4-4-2013
4.	232/2012	Kewal Krishan V/S -do-	4-4-2013
5.	318/2012	Vijay Kumar V/s -do-	4-4-2013
6.	41/2001	Hari Singh V/s Secy. I&PH Shimla	4-4-2013
7.	22/2010	Dharam Chand V/s S.O. Dharamshala	8-4-2013
8.	292/2012	Dalbair Singh V/s M.D. M/s Adinath Rubber.	18-4-2013
9.	278/2012	Satish Kumar V/s M.D. -do-	18-4-2013
10.	104/2011	Naino Devi V/s D.F.O Pangi.	22-4-2013
11.	216/2012	Ajay Kumar V/s E.E. I&PH Chamba.	22-4-2013
12.	215/2012	Hem Raj V/s -do-	22-4-2013
13.	214/2012	Shamsher Singh V/s -do-	22-4-2013
14.	213/2012	Raj Kumar V/s -do-	22-4-2013
15.	206/2012	Kishori Lal V/s D.F.O. Joginder Nagar.	24-4-2013
16.	131/2012	Inder Singh V/s E.E. I&PH Padhar.	29-4-2013
17.	130/2012	Karam Singh V/s -do-	29-4-2013
18.	107/2012	Ramkali V/s -do-	29-4-2013
19.	106/2012	Sandesh Verma V/s -do-	29-4-2013
20.	105/2012	Budhi Singh V/s -do-	29-4-2013
21.	103/2012	Sunka Ram V/s -do-	29-4-2013
22.	101/2012	Gian Chand V/s -do-	29-4-2013
23.	277/2010	President Red Cross V/s Red Cross	11-4-2013
24.	100/2012	Hardish V/s E.E. I&PH Paddhar	29-4-2013
25.	99/2012	Anil Kumar V/s -do-	29-4-2013

26.	97/2012	Govind Ram V/s -do-	29-4-2013
27.	06/2013	Prem Singh V/s Principal Chief Conservater	30-4-2013
28.	73/2012	Ashok Kumar V/s Factory Manager Sabar Paper	1-5-2013
29.	76/2012	Rakehs Kumar V/s -do-	-do-
30.	77/2012	Surinder Pal Singh V/s -do-	-do-
31.	152/2011	Pawan Kumar V/s -do-	-do-
32.	154/2011	Pardeep Singh V/s -do-	-do-
33.	155/2011	Raj Kumar V/s -do-	-do-
34.	156/2011	Makhan Singh V/s -do-	-do-
35.	143/2012	Joginder Singh V/s E.E. HPPWD Joginder	2-5-2013
36.	126/2012	Janak Singh V/s -do-	-do-
37.	128/2012	Ram Singh V/s -do-	-do-
38.	144/2012	Ramesh Kumar V/s -do-	-do-
39.	139/2012	Nek Ram V/s -do-	-do-
40.	129/2012	Baldev Singh V/s -do-	-do-
41.	39/2012	Rani Devi V/s E.E. HPPWD Dharmpur	2-5-2013
42.	136/2012	Kishan Singh V/s E.E. I&PH Padhar	3-5-2013
43.	145/2012	Bimla Devi V/s E.E. HPPWD Joinder Nagar	3-5-2013
44.	146/2012	Hem Singh V/s -do-	-do-
45.	141/2012	Mohan Singh V/s -do-	-do-
46.	117/2012	Pyar Chand V/s -do-	-do-
47.	147/2012	Rajan Kumar V/s -do-	-do-
48.	45/2011	Om Prakesh V/s Manager L & T	8-5-2013
49.	238/2012	Ravinder Kumar V/s Principal DAV Alampur	13-5-2013
50.	367/2009	Ashok Kumar V/s E.E. I & P.H. Dalhosie	14-5-2013
51.	348/2009	Charan Singh V/s -do-	-do-
52.	420/2009	Prakesh Chand V/s -do-	-do-
53.	379/2009	Amar Singh V/s -do-	-do-
54.	226/2012	Kanoru Ram V/s D.F.O. Suket	15-5-2013
55.	444/2009	Bhuru V/s E.E. HPPWD, Kullu	15-5-2013
56.	83/2012	Chintamani V/s D.F.O. Suket	16-5-2013
57.	06/2011	Rita Sharma V/s Chairman Sushil Pudhir	20-5-2013
58.	36/2011	Madan Lal V/s E.E. HPPWD, Mandi	20-5-2013
59.	24/2011	Tara Devi V/s Principal DAV	20-5-2013
60.	402/2009	Raman Kumar V/s E.E.I& PH, Dalhousie	20-5-2013
61.	383/2009	Rakesh Kumar V/s -do-	-do-
62.	376/2009	Jeevan Singh V/s -do-	-do-
63.	374/2009	Surinder Singh V/s -do-	-do-
64.	335/2012	Sokina Devi V/s E.E. HPPWD, J/Nagar	24-5-2013
65.	329/2012	Kaushalya Devi V/s -do-	-do-

By order,  
Sd/-

ACS (Labour & Employment).

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 216/2012  
Date of Institution : 17.4.2012  
Date of Decision : 22.04.2013

Shri Ajay Kumar s/o Shri Basant Ram, r/o Barotra Mohalla Drobhi, Chamba Town  
Chamba, Distt. Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH, Division, Chamba, Distt. Chamba, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
: Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the services of Sh. Ajay Kumar S/O Sh. Basant Ram Barotra Mohalla Drobhi, Chamba Town Chamba Distt. Chamba, the H.P. from time to time during the years 1997 to 2005 by the Executive Engineer, I&PH Division, Chamba Distt. Chamba, H.P. without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of May, 1995 and is still working as such.
2. That the petitioner worked continuously in the year 1995 & 1996 and completed more than 240 days in these 2 years, but during the month of June 1997 the department has started to give artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted to and be kept on tenterhooks and be exploited by the respondent department. The respondent has kept close the petitioner from work in the month of Nov. & Dec. 1997, Jan. 1999, April 1999, May 2000 to July 2000, Feb. 2001 & April 2001 to Jan. 2002 whereas during this period my junior workmen had been retained continuously on muster roll.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous

service in each year for the purpose of regularisation of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.

4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the year 1997 to April 2006 whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.
5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month June 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached

herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.

9. That the applicant has spotless services with the respondent and has never been charge-sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India. Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:—

#### RELIEF SOUGHT

- (a) The period of breaks given by the respondent from time to time between the year 1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 1997 to 2006.
- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 9 of the reply read thus:—

“1. That the contents of this para are not disputed.

2. That the contents of para 2 of the claim petitioner are wrong hence denied. A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to non availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment, it was well with inn the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.

3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.

4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is bessest where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.

5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.

7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.

8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.

9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of

disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
  4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. The petitioner Shri Ajay Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the

fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 uptil date.

15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division Udaipur, Division Chamba.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of May, 1995 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.5.1995.

18. The version of the petitioner is that from June, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of June, 1997 to 31.12.2005 (as per reference) as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

21. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is decided in favour of the petitioner and against the respondent.

### **Issues No. 2 and 3**

23. Not pressed.

### **Relief (Issue No. 4)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.12.2005 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of June, 1997 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 99/2012  
Date of Institution : 06.1.2012  
Date of Decision : 29.04.2013

Shri Anil Kumar s/o Shri Jalam Ram, r/o Village Kuhalda, P.O. Ropari, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
                               : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Anil Kumar S/O Sh. Jalam Ram, Village-Kuhalda, P.O. Ropari, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years 1998 to 2000, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 01.9.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 91 days in the year 1999 and 201 days in the year 2000. From the year 2000 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of ‘last come first go’. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 01.9.1998. He completed eight years of service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the observations made by the Hon’ble Apex Court in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs. 4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.10.1998 to 31.12.2000 and directed to respondent to pay the wages of the applicant in breaks

periods and counted the said period in continuity of services for the purpose of his regularization.

- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. reliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 01.9.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 07.10.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No  
 Issue No. 2 : Yes  
 Issue No. 3 : Not pressed  
 Issue No. 4 : Not pressed.  
 Relief : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issue No. 1

8. Shri Anil Kumar (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-18 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and others workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 01.9.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of

1946), or under the Act or under any other law applicable to the industrial establishment;

- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.9.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescuetaking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

### Issues No. 3 and 4

24. Not pressed.

### Relief (Issue No. 5)

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 105/2012  
Date of Institution : 06.1.2012  
Date of Decision : 29.04.2013

Shri Budhi Singh s/o Shri Chuhru Ram, r/o Village Oder, P.O. Bassi, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I & PH, Division, Padhar, Distt. Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Budhi Singh S/O Sh. Chuhru Ram, Village Oder, P.O. Bassi, Tehsil Joginder Nagar, Distt. Mandi, by the

Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years 1998 to 2000 without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 01.4.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.1999. He worked for 64 days in the year 1998 and 173 days in the year 1999. From 01.01.2000 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of 'last come first go'. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 01.4.1998. He completed eight years of service on 31.12.2005 and 10 years of continuous service on 31.12.2007. As per the observations made by the Hon'ble Apex Court in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs. 4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 01.04.1998 to 31.12.1999 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 01.4.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 09.3.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 

Issue No. 1 :	No
Issue No. 2 :	Yes
Issue No. 3 :	Not pressed
Issue No. 4 :	Not pressed.
Relief. :	Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No. 1**

8. Shri Budhi Singh (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-24 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 01.4.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.4.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

## **Issues No. 3 and 4**

24. Not pressed.

## **Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 22/2010  
Date of Institution : 26.2.2010  
Date of Decision : 08.04.2013

Shri Dharam Chand s/o Shri Uttam Chand, r/o Village Bangot, P.O. Sidhyani, Tehsil Sadar,  
Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Settlement Officer, Kangra Division, Kangra, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner(s) : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Dharam Chand S/O Sh. Uttam Chand w.e.f. 27.7.2003 by the Settlement Officer Kangra Division Dharamshala without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits the above worker is entitled to?”

2. After the receipt of the reference a corrigendum dated 5<sup>th</sup> October, 2012 was received from the appropriate Govt. It reads thus:—

“With reference to this office notification of even No., dated-19.11.2009 in respect of the industrial dispute of Sh. Dharam Chand S/O Sh. Uttam Chand, Village-Bangot, P.O. Sidhyani, Tehsil Sadar, Distt. Mandi, H.P. V/s The Settlement Officer, Kangra, H.P. In the issue of reference the date of termination be read as 31.7.2003 instead of 27.7.2003”.

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged by the respondent as a Chainman on daily wages w.e.f. 28th August, 1996 per office order No. 3070 dated 27th August, 1996 on 89 days basis. He (petitioner) continuously worked with the respondent up-to 31st July, 2003 and completed almost seven years of service. During the period of his engagement his work and conduct was satisfactory. Vide notice No. 2165, dated 21.7.2003, his services have been terminated by the respondent w.e.f. 31.7.2003 (afternoon) without assigning any reason. Before the termination of his services, neither one month notice was served upon him nor an inquiry was conducted against him for the misconduct, if any. The retrenchment compensation was also not paid to him. He had completed more than 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his retrenchment. At the time of the termination of his services the respondent adopted the method of pick and choose. The persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. The seniority list pertaining to the daily waged chainmen was not supplied to him (petitioner) at the time of his termination. The work for which his services were engaged is of permanent nature. Instead of regularizing his services, the respondent has removed him from service arbitrarily. A similarly situated chainman namely Shri Durga Dass had instituted O.A. No.2152/2003 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. Such Original Application was transferred to the Hon'ble High Court of Himachal Pradesh and registered as CWP (T) No. 9552/2008. The CWP was decided by the Hon'ble High Court of Himachal Pradesh on 29.4.2010. The termination notice dated 21.7.2003 was quashed and set aside. His (petitioner's) case is squarely covered by the judgment dated 29.4.2010 rendered by the Hon'ble High Court of Himachal Pradesh. From the date of his disengagement, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “(i) The Hon'ble Court may kindly be set aside the illegal termination order/notice dated 21.07.2003 w.e.f. 31.7.2003 and directed to respondent to reinstate the services of applicant with full back wages, seniority and in continuity of services with all consequential benefits.
- (ii) The Hon'ble Court may kindly be directed to respondent to regularize the services of applicant as per the policy of the state government.
- (iii) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done”.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a Chainman initially for 89 days on daily wage basis w.e.f. 28th August, 1996. It stands admitted that the petitioner worked continuously up-to 31st July, 2003. The State carries out sovereign function of surveys/settlement of land holdings by undertaking the Settlement Operations under his (respondent's) overall supervision and control as per Chapters IV and VIII of the H.P. Land Revenue Act, 1954. Per notification dated 9th February, 1995, the area falling within territorial jurisdiction of Kullu District came under the Settlement Operation. For the said purpose, the chainmen were employed in a phased manner. On 03.4.2003 as many as 64 daily paid chainmen were engaged. Their composite seniority list is annexure R-V. With the conclusion of the settlement work, the need of the work force diminished. Due to the non availability of the work, funds and sanction, it was difficult for the State (respondent) to carry on with the services of so

many chainmen. Accordingly, the State of Himachal Pradesh per letter dated 26.8.2002 accorded the sanction/approval for the posts of 116 casual patwaris and 50 daily waged chainmen. Keeping in view the above sanction, he (respondent) by applying the principle of 'last come first go' retrenched the services of the chainmen figuring at serial No.51 to 64 of the seniority list annexure RV. Before the retrenchment of the services, due notices dated 21.7.2003 were given to the chainmen whose services were disengaged w.e.f. 31.7.2003. Settlement Operation is the sovereign function of the State. The petitioner and the similarly situated workmen are not entitled to any protection under the Act. Moreover, the Settlement Operation is not of permanent nature. The work recedes with the passage of time. Resultantly, the need of the work force also reduces. He (respondent) is not running an industry. This Court has no jurisdiction to entertain and decide the matter. The facts that the petitioner had worked for more than 240 days in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his termination have not been disputed. No person junior to the petitioner has been retained in service or engaged/re-engaged. He (respondent) strictly followed the principle of 'last come first go' and did not indulge in any unfair labour practice. Some of the chainmen have been re-employed as per the directions of the Hon'ble High Court and this Court. The work assigned to the petitioner was not of permanent nature. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. He (petitioner) is not entitled to any relief.

In these circumstances, the respondent prays that the petition being devoid of merit be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the persons junior to him have been reengaged by the respondent by ignoring him.

6. Per order dated 20.12.2011, following issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 27.7.2003 is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what relief, the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable as the respondent is allegedly performing sovereign function, if so, to what effect? ..OPR.
3. Relief.

7. After the receipt of the corrigendum, amended statement of claim/demand and reply to it were filed by the parties. Per order dated 26.2.2013 issue No.1 was recast as under:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.07.2003 is illegal and unjustified as alleged? ..OPP.
8. I have heard the ld. counsel/AR for the parties and have gone through the case file.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : No

Relief. : Claim petition allowed in part  
vide operative part of the Award.

## REASONS FOR FINDINGS

**Issue No.1**

10. Shri Dharam Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his name figures at serial No.54 of the seniority list. He also admitted that the notice Ex.PW1/C was given by the respondent and his services were terminated w.e.f. 31.7.2003. He denied that nowadays no work of settlement is in progress in Kullu District and he has instituted a phoney petition.

11. Conversely, Shri J.S. Pathania, Settlement Officer, Kangra Division at Dharamshala (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the services of the petitioner were engaged as a daily wager in the month of August, 1996. He also admitted that the petitioner had worked for more than 240 days in each and every calendar year of his employment as well as in a block of 12 calendar months anterior to the date of his termination. Further, he admitted that the workmen whose names figure at serial No.55 to 64 of the seniority list are junior to the petitioner and are working under him (respondent). Self stated, they have been engaged as per the orders of the Hon'ble High Court. He admitted that before the termination of the services of the petitioner, neither one month notice was given to him nor the salary in lieu of the notice period and the retrenchment compensation were paid. He admitted that when the services of the petitioner were disengaged, Settlement Operation was continuing in Districts Hamirpur, Una and Kullu of the State of Himachal Pradesh. He admitted that when the persons junior to the petitioner were reengaged, an opportunity of re-employment was not afforded to him. He denied that the services of the petitioner have been terminated in a wrongful manner.

12. Ex. PW1/B (corresponding to Ex. RW1/C) is the copy of an office order dated 27th August, 1996 issued by the respondent. It depicts that the services of the petitioner were engaged as a daily waged Chain Man for 89 days.

13. Ex. PW1/C (corresponding to Ex. RW1/G) is the copy of the termination notice dated 21st July, 2003 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were disengaged w.e.f. 31.7.2003 (afternoon) as the same were no more required by the respondent.

14. Ex. PW1/D is the copy of the judgment dated April 29, 2010 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP (T) No.9552/2008 titled as Durga Dass vs. State of H.P. & another.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. Ex. RW1/D is the copy of the notification dated 9th February, 1995 issued by the Secretary (Revenue) to the Government of Himachal Pradesh, Shimla. It reveals that the record of rights of District Kullu was ordered to be specially revised.

17. Ex. RW1/E is the copy of the land records manual dealing with the engagement of the staff for Settlement Operation.

18. Ex. RW1/F is the seniority list of daily waged Chain Men of the office of the respondent as it stood on 31.3.2003.

19. Ex. RW1/H is the copy of an office order dated 28.6.2010 issued by the respondent. It clarifies that in obedience to the judgments dated 26.4.2010 and 29.4.2010 rendered by the Hon'ble High Court of Himachal Pradesh in CWP (T) No.9554/2008 and CWP (T) No.9552/2008, the services of S/Shri Mohinder Singh and Durga Dass were re-engaged.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged Chain Man w.e.f. 28th August, 1996 and he worked continuously as such up-to 31.7.2003. It is also an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 31.7.2003 (afternoon) per notice dated 21.7.2003, the copies of which are Exts. PW1/C and RW1/G. The assertion of the respondent that the services of the petitioner were disengaged because of the non-availability of the work does not appear to be true as from the statement made by the respondent (RW1), it can be gathered that the Settlement Operation is still continuing in Districts Hamirpur, Kullu and Una of the State of Himachal Pradesh.

21. The admissions made by the respondent (RW1) coupled with the mandays chart Ex.RW1/B go to show that the petitioner had worked for more than 240 days in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his termination.

22. Section 25-F of the Act postulates as under:—

**“25-F. Conditions precedent to retrenchment of workmen.—**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

23. Admittedly, the provisions of the above quoted Section were not complied with by the respondent. Neither one month notice was given to the petitioner/claimant nor the retrenchment compensation was paid to him.

24. Moreover, Shri J.S. Pathania, (RW1) admitted that the persons junior to the petitioner are still serving under him. At the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was not afforded to him.

25. Taking into account the facts and circumstances of this case, it can be safely said that the respondent has flouted the provisions of Sections 25-F, 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is, thus, illegal and unjustified.

26. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

28. Taking into consideration the observations made by our Hon'ble High Court in Civil Writ Petition (T) No.9554/2008 titled as Mohinder Singh vs. State of H.P. & anr. decided on 26.4.2010 as well as Civil Writ Petition (T) No.9552/2008 titled as Durga Dass vs. State of H.P. and another decided on 29.4.2010, it can be easily said that the provisions of the Act are applicable to the instant case. The petition is maintainable in the present form.

29. This issue is also decided in favour of the petitioner and against the respondent.

## **Relief (Issue No. 3)**

30. As a sequel to my findings on the above issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 31.7.2003 except back wages. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 101/2012  
Date of Institution : 06.1.2012  
Date of Decision : 29.04.2013

Shri Gian Chand s/o Shri Lala Ram, r/o Village Dalehar, P.O. Dohag, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Gian Chand S/O Sh. Lala Ram, Village Dalehar, P.O. Dohag, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years 1998 to 2000, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wagger on muster roll basis by the respondent on 11.5.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 149 days in the year 1999 and 218 days in the year 2000. From 01.1.2001 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of ‘last come first go’. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 11.5.1998. He completed eight years of service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the observations made by the Hon’ble Apex Court in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.11.1998 to 31.12.1999 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 11.5.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 07.10.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya’s case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	No
Issue No. 2 :	Yes
Issue No. 3 :	Not pressed
Issue No. 4 :	Not pressed.
Relief. :	Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Gian Chand (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-28 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 01.05.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.5.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

**Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

**Issues No. 3 and 4**

24. Not pressed.

**Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 97/2012  
Date of Institution : 06.1.2012  
Date of Decision : 29.04.2013

Shri Govind Ram s/o Shri Bhopat Ram, r/o VPO Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Govind Ram S/O Sh. Bhopat Ram, VPO Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years 1998 to 2000, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wagger on muster roll basis by the respondent on 01.10.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 189 ½ days in the year 1999 and 193 ½ days in the year 2000. From 01.1.2001 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of ‘last come first go’. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 01.10.1998. He completed eight years of service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the observations made by the Hon’ble Apex Court in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs. 4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.11.1998 to 31.12.1999 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.

(ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/-

and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.

(iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.

(iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 01.10.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 07.10.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.

2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No  
 Issue No. 2 : Yes  
 Issue No. 3 : Not pressed  
 Issue No. 4 : Not pressed.  
 Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. Shri Govind Ram (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-26 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and others workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 01.10.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.*— For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;

- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for atleast 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.10.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

**Issues No. 3 and 4**

24. Not pressed.

**Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 100/2012  
Date of Institution : 06.1.2012  
Date of Decision : 29.04.2013

Shri Hardish s/o Shri Prabhu, r/o Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar,  
Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Hardish S/O Sh. Prabhu, Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years

1998 to 2000, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 06.1.1999. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2001. He worked for 181 days in the year 1999, 178 days in the year 2000 and 229 days in the year 2001. From the year 2002 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of 'last come first go'. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 06.1.1999. He completed eight years of service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the observations made by the Hon'ble Apex Court in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 26.01.1999 to 31.12.2001 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 06.1.1999. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 03.11.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 07.5.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.

## 5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No  
 Issue No. 2 : Yes  
 Issue No. 3 : Not pressed  
 Issue No. 4 : Not pressed.  
 Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No.1**

8. Shri Hardish (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ext. RW1/E is the copy of the letter dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-18 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 06.1.1999. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation.-* For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.1.1999. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2001. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

## **Issues No. 3 and 4**

24. Not pressed.

## **Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 41/2001  
RBT No. : 403/2004  
Date of Institution : 22.3.2001  
Date of Decision : 04.4.2013

Shri Hari Singh s/o Shri Nanku Ram, r/o Village & P.O. Santhal, Tehsil Jogindernagar,  
Distt. Mandi, H.P. *..Petitioner.*

*Versus*

1. Secretary, Irrigation and Public Health, Government of Himachal Pradesh, Shimla-2.
2. Executive Engineer, Irrigation and Public Health, Division Mandi.
3. Executive Engineer, Irrigation and Public Health Division, Padhar, Distt. Mandi, H.P.

*..Respondent(s).*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Upender Verma, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Hari Singh, ex-daily wages beldar by (1) Secretary Irrigation and Public Health, Government of Himachal Pradesh, Shimla-2; (2) Executive Engineer, Irrigation and Public Health Division, Mandi and (3) Executive Engineer, Irrigation and Public Health Division, Padhar District Mandi, H.P. w.e.f. 1-7-91 without any notice, chargesheet, enquiry and without compliance of section 25(F) of the Industrial Disputes Act, 1947, on completion of 240 days’ continuous service, as alleged, is legal and justified. If not, to what relief of service benefits and amount of compensation, Shri Hari Singh is entitled?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent No. 2 in Sub Division Joginder Nagar as a daily waged blacksmith-cum-beldar on 1<sup>st</sup> May, 1981. No appointment letter was issued in his name. He worked as such up-to 30.6.1991 without any break on muster roll basis under the respondents No. 2 and 3. He completed more than 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his termination. He was on leave w.e.f. 01.7.1991 to 31.7.1991 on medical grounds. While being on duty on 30.6.1991, he was ill. He (petitioner) got the treatment from M/s. Janta Clinic, Tikroo. On 1st August, 1991, the medical fitness certificate and the application for the grant of medical/sick leave were submitted by him to the Section Officer, Chauntra. The Section Officer did not provide any work to him (petitioner) and informed that his name has been struck off from the muster roll of the Section. The Section Officer also intimated that Shri Chingu Ram r/o VPO Sainthal who was working in Lad Bharol Section, has been posted in his (petitioner's) place as a blacksmith-cum-beldar and presently no vacancy is available. The Section Officer assured him (petitioner) that as and when any vacancy arises he will be considered first for re-engagement. The persons who were working with him (petitioner) have already been regularized. On 01.8.1991 his services have been wrongly and illegally terminated by the respondents. Before the termination of his services, neither any notice was given to him nor he was charge-sheeted. The retrenchment compensation was also not paid to him. He has been removed from service without complying with the provisions of Sections 25-F and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). Various representations were made by him for re-employment, but in vain. Work is available with the respondents. He has not been re-engaged. After his termination, new/fresh hands have been engaged by the respondents. The names of the persons newly appointed are S/Shri Ram Lal, Ramesh Chand and Som Datt etc. The services of his juniors have also been regularized. At the time of his disengagement, the persons junior to him were retained in service by the respondents. The latter failed to adhere to the principle of 'last come first go'. The action of the respondents is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) That the respondents/department may be ordered to reinstate the services of the petitioner on work charge on regular pay scale w.e.f. 1.1.1994 and pay the full back wages and full seniority along with others service incidental benefits.
- (ii) That the termination ordered (orally) be quashed and set aside”.

3. On notice, the respondents appeared. They submitted joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petition is time barred.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger by the respondent No.2 on 01.5.1981. However, it has been denied that the petitioner worked continuously as a blacksmith/beldar. He did not complete 240 days of work in any calendar year of his engagement. His mandays chart is annexure R1. The petitioner did not fall ill as alleged. Neither he intimated the respondent No. 3 about the ailment nor produced any medical certificate as claimed. The petitioner never presented himself before the Section Officer, Chauntra for getting the job. Shri Chingu Ram was not posted in place of the petitioner as alleged. The services of the petitioner were never terminated/retrenched. He left the work without any intimation to the department. The facts that the persons junior to the petitioner are serving the department and new/fresh hands have been engaged have not been denied. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that he never left the service voluntarily.

5. Per order dated 07.10.2003, following issues were framed.

1. Whether termination of services of the petitioner by the respondents w.e.f 1.7.91 is violative of Sections 25 F and N of the I.D. Act, 1947? ..OPP.
2. Whether the reference is not maintainable? ..OPR.
3. Whether the petitioner has left the job on his own & if so, its effect? ..OPR.
4. Whether the reference is barred by time? ..OPR.
5. Relief.

6. At this stage, I will like to highlight that the claim petition was dismissed by the one of my ld. Predecessors per Award dated 13.6.2006 by holding that reference/claim petition is time barred and the claimant/petitioner had left the job of his own. Against the Award dated 13.6.2006 the petitioner preferred CWP No.4050/2009-H before the Hon'ble High Court of Himachal Pradesh. The Civil Writ Petition was allowed by the Hon'ble High Court vide order dated 09.10.2012. The Award dated 13.6.2006 was upset and the case was remanded to this Court with the direction to give the findings afresh on all the issues and then answer the reference. After the remand, no evidence was adduced by the parties.

7. I have heard the ld. counsel for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	No
Issue No. 2 :	Yes
Issue No. 3 :	No
Issue No. 4 :	No
Relief. :	Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issues No. 1 and 3

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. Shri Hari Singh (petitioner) stepped into the witness box as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had not completed 240 days of work. He also denied that the office people refused to honour the medical certificate as the same is/was fictitious. Further, he denied that on 01.7.1991, he abandoned the job and, thereafter, he did not approach the respondents for re-engagement.

11. Conversely, Shri M.C. Dhiman, Asstt. Engineer, I&PH Sub Division, Joginder Nagar testified as RW1. He corroborated on oath the contents of the reply preferred by the respondents.

In the cross-examination, he admitted that after 1990, new/fresh hands have been appointed. He also admitted that the juniors are working continuously from the year 1991 to 2003. He does not know as to whether the petitioner had completed 240 days of work or not.

12. Ex. P-1 is the copy of the medical certificate allegedly produced by the petitioner. As per this certificate the petitioner remained absent from duty for 30 days w.e.f. 01.7.1991 to 30.7.1991 due to the illness.

13. Exts. P-2 to P-5 and P-8 to P-12 are the copies of correspondence which took place between the petitioner and the respondents as well as the latter's inter se.

14. Exts. P-6 and P-7 are the copies of the demand notices dated 12.6.1998 and 28.11.1998 served upon the respondents by the petitioner.

15. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. That being so, taking into account the terms of the reference, this Court is required to decide as to whether the services of the petitioner have been terminated without complying with the provisions of Section 25-F of the Act or not?

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged blacksmith-cum-beldar on 01.5.1981 and he served as such up-to 30.6.1991. The version of the petitioner is that on 01.7.1991 he fell ill because of which he could not attend to his duties from 01.7.1991 to 31.7.1991. On 01.8.1991, when he reported for duty alongwith the medical fitness certificate and the application for the grant of sick leave, he was not provided the work by the Section Officer, Chauntra, who informed him (petitioner) that his name has been struck off from the muster roll. While denying these facts, the respondents have pleaded that the petitioner did not fall ill at any point of time. He left the job of his own accord and free volition on 01.7.1991 and, thereafter, never reported for duty or re-employment.

17. It is well known that the abandonment has to be proved like any other fact by the respondents/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was given to the petitioner by the respondents calling upon him to resume his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

18. The petitioner has not placed on the record any document evidencing that he had worked for more than 240 days in each and every calendar year of his engagement or in a block of 12 calendar months preceding the date of his termination i.e. 01.7.1991. The bald statement made by the petitioner (PW1) in this regard cannot be taken as a gospel truth.

19. Annexure R1 i.e. the mandays chart relating to the petitioner unfolds that he did not complete 240 days of work in a block of 12 calendar months anterior to the date of his retrenchment i.e. 1st July, 1991. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. Otherwise too, a glance of the petition/statement of claim and the rejoinder clarifies that the petitioner has not challenged the termination order dated 01.7.1991 (as per the reference) on any count. He has challenged the termination/retrenchment order dated 01.8.1991 which was never passed by the respondents. Since the termination order dated 01.7.1991 has not been questioned by the petitioner on any ground, by no stretch of imagination, it can be said that his services were wrongly and illegally retrenched by the respondents on that day.

21. These issues are decided accordingly.

## **Issue No. 2**

22. Taking into account my findings on the issues No.1 and 3 above, it is held that the reference/claim petition is not maintainable.

23. This issue is decided against the petitioner and in favour of his adversaries.

## **Issue No. 4**

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. This issue is decided in favour of the petitioner and against the respondents.

## **Relief (Issue No. 5)**

27. As a sequel to my findings on the various issues, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 215/2012  
Date of Institution : 17.4.2012  
Date of Decision : 22.04.2013

Shri Hem Raj s/o Shri Keso Ram, r/o VPO Udaipur, Tehsil and Distt. Chamba, H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Chamba, H.P. ..*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
: Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the services of Sh. Hem Raj S/O Sh. Keso Ram V.P.O. Udaipur, Tehsil and Distt. Chamba, H.P. from time to time during the years 1997 to 2006 by the Executive Engineer, HPPWD Division Killar, Distt. Chamba, without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the reference a corrigendum dated 2nd June, 2012 was received from the appropriate Govt. It reads thus:—

With reference to this office notification of even No., dated-31.12.2012 in respect of the industrial dispute of Sh. Hem Raj S/O Sh. Keso Ram, VPO Udaipur, Tehsil & Distt. Chamba, H.P. V/s The Executive Engineer, I&PH Division, Chamba, H.P. In the issue of reference the word “Executive Engineer, HPPWD Division Killar, Distt. Chamba” be read as “The Executive Engineer, I &PH Division, Chamba, H.P.”

3. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

“1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of March, 1997 and is still working as such. 2. That the petitioner worked continuously with fictional breaks w.e.f. 3/1997 to 4/2006. The department has given artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted and be kept on tenterhooks and has been exploited by the respondent department.

3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularisation of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.
4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the month of 3/1997 to April 2006. Whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.
5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month March, 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, unconstitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade

Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.

9. That the applicant has spotless services with the respondent and has never been charge-sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India.

Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:—

**Relief Sought:—**

- (a) The period of breaks given by the respondent from time to time between the year 1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 3/1997 to 2006.
- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
  - (i) To direct the respondent for the production of original record pertaining to the case of petitioner.
  - (ii) Any other relief as the Hon'ble court may deem fit".

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the

effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 9 of the reply read thus:—

- “1. That the contents of this para are not disputed.
2. That the contents of para 2 of the claim petitioner are wrong hence denied A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to non-availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with in the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.
3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.
4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is besed where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.
- 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing

policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.

7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner. 9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

5. No rejoinder has been preferred by the petitioner.
6. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
  4. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### Issue No. 1

9. The petitioner Shri Hem Raj stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

10. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

11. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

12. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

15. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 upto date.

16. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

17. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division, Udaipur, Division Chamba.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of March, 1997 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.3.1997.

19. The version of the petitioner is that from March, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

20. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by

the respondent. If no work or funds were available with the respondent then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to April, 2006 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue is decided in favour of the petitioner and against the respondent.

### **Issues No.2 and 3**

24. Not pressed.

### **Relief (Issue No.4)**

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to April, 2006 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

Ref. No. : 131/2012  
Date of Institution : 19.1.2012  
Date of Decision : 29.04.2013

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. *..Respondent.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

“Whether termination of the services/giving breaks in the services of Sh. Inder Singh S/O Sh. Mani Ram, Village Thathri (ਠਠਰੀ), P.O. Tikroo, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 06.8.1999. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 71 days in the year 1999 and 231 days in the year 2000. From 01.1.2001 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of 'last come first go'. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the

daily wager without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 06.8.1999. He completed eight years of service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the observations made by the Hon'ble Apex Court in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 26.08.1999 to 31.12.2000 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 06.8.1999. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 22.09.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had

not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	No
Issue No. 2 :	Yes
Issue No. 3 :	Not pressed
Issue No. 4 :	Not pressed.
Relief. :	Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No.1

8. Shri Inder Singh (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain

absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-16 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and others workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 06.8.1999. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.8.1999. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not

reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

#### **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

#### **Issues No. 3 and 4**

24. Not pressed.

#### **Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 130/2012  
Date of Institution : 19.1.2012  
Date of Decision : 29.04.2013

Shri Karam Singh s/o Shri Tawar Chand, r/o Village Panjhagna, P.O. Harabag, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
                               : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Karam Singh S/O Sh. Tawar Chand, Village –Panjhagna, P.O. Harabag Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wagger on muster roll basis by the respondent on 19.1.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 172 days in the year 1998, 139 days in the year 1999 and 215 days in the year 2000. From the year 2001 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of ‘last come first go’. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 19.1.1998. He completed eight years of service on 31.12.2005 and 10 years of continuous service on 31.12.2007. As per the observations made by the Hon’ble Apex Court in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs. 4910-10680/- with all other perks and allowances. Now he is

working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 19.01.1998 to 31.12.2000 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 19.1.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 07.10.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya’s case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The

regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No  
 Issue No. 2 : Yes  
 Issue No. 3 : Not pressed  
 Issue No. 4 : Not pressed.  
 Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Karam Singh (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-29 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 19.1.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 19.1.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is noxious to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were

initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

### **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

### **Issues No. 3 and 4**

24. Not pressed.

### **Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 232/2012  
Date of Institution : 01.5.2012  
Date of Decision : 04.04.2013

Shri Kewal Krishan s/o Shri Nidhia Ram, r/o Village Quilla, P.O. Saroo, Tehsil & Distt. Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH, Division, Chamba, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
                               : Sh. I.S. Jaryal, AR  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kewal Krishan S/O Sh. Nidhia Ram, Village Quilla, P.O. Saroo, Tehsil & Distt. Chamba, H.P. from time to time during the year 1997 to 2006 by The Executive Engineer, I&PH Division Chamba, H.P. without complying with the provisions of section 25-F, G & H of ibid Act, is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of March, 1997 and is still working as such.
2. That the petitioner worked continuously with fictional breaks w.e.f. 3/1997 to 4/2006. The department has given artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted and be kept on tenterhooks and has been exploited by the respondent department.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularisation of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.
4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the month of 3/1997 to April 2006. Whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.

5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of H.P.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month March, 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.
9. That the applicant has spotless services with the respondent and has never been charge-sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India. Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:—

**Relief Sought:—**

- (a) The period of breaks given by the respondent from time to time between the year 3/1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 3/1997 to 2006.
- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 9 of the reply read thus:—

- "1. That the contents of this para are not disputed.
2. That the contents of para 2 of the claim petitioner are wrong hence denied A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to non-availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with inn the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.
3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.

4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is besed where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.
- 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.
7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.
9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. The petitioner Shri Kewal Krishan stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.
14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 upto date.
15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.
16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division, Udaipur, Division Chamba.
17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of March, 1997 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.3.1997.
18. The version of the petitioner is that from March, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.
19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent, then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.
20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to April, 2006 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).
21. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.
22. This issue is decided in favour of the petitioner and against the respondent.

### **Issues No. 2 and 3**

23. Not pressed.

### **Relief (Issue No. 4)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to

April, 2006 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 206/2012  
Date of Institution : 24.11.2010  
Date of Decision : 24.04.2013

Shri Kishori Lal s/o Shri Chuni Lal, r/o Village Lower Chauntra, P.O.Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner

*Versus*

1. State of H.P. through its Secretary (Forest) to the Govt. of H.P. Shimla.
2. Conservator of Forests, Forest Circle, Mandi, District Mandi, H.P.
3. The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P.

*..Respondents.*

*Reference/Direct Claim Petition under Section 2-A of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

This is a direct claim petition preferred under Section 2-A of the Industrial Disputes Act, 1947, as amended up-to date ('the Act' for short).

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged forest worker by the respondents in the year 2005. No appointment letter was issued in his name. He worked as such up-to the month of January, 2007. The payment was made to him by the respondents some times on muster roll basis and some times on bill voucher basis. In January, 2007, his services were terminated by the respondents all of a sudden. Demand notice dated 06.3.2008 was served upon the respondents by him. Shri Roop Lal, Range Officer an authorized representative of the respondent No. 3, appeared before the Labour-cum-Conciliation Officer, Mandi. During the conciliation proceedings the respondents agreed to reinstate him in service as per the settlement dated 17.3.2009 arrived at before the Conciliation Officer, Mandi under Section 12(3) of the Act. Pursuant to the settlement, his services were re-engaged by the respondent No.3 w.e.f. 16.4.2009. He then worked up-to June, 2009. His (petitioner's) services were once again terminated w.e.f. 1<sup>st</sup> July, 2009 by the Beat Guard Shri Jai Ram as per the directions of the respondent No.3 by a verbal order. Before the termination of his services, neither any notice was given to him nor he was charge-sheeted. No inquiry was conducted against him for the misconduct, if any. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of his disengagement on 01.7.2009, the persons junior to him namely Smt. Kanta Devi, Smt. Kaushalya Devi, Smt. Naro Devi, Shri Balam Ram and Shri Kanshi Ram were retained in service by the respondents. The latter failed to adhere to the principle of 'last come first go' as well as violated the settlement dated 17.3.2009 which amounts to unfair labour practice. From the date of his initial engagement to June, 2009 fictional breaks were provided to him by the respondent No.3 despite the fact that the works and funds were available. From the year 2005 to June, 2009, many workers were employed by the respondents on bill voucher or muster roll basis and a lot of works were completed. This indicates that the work and funds were available with the respondents. From the date of his illegal termination, he is unemployed. The act and conduct of the respondents is illegal, arbitrary and unjustified. It also contravenes the provisions of Sections 25-F, 25-G, 25-T, 25-U and 29 of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court may kindly be set aside the unlawful break period of fictional breaks for the period from 2005 to 30.06.2009 and directed to respondents to pay the wages of break period and the period be condone in her continuity of service, seniority and all other purposes including regularization.
- (ii) The Hon'ble Court may kindly be set aside the unlawful termination order dated 01.07.2009 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout”.

3. On notice, the respondents appeared. They submitted joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since the petitioner has approached the Court without taking recourse to the mandatory provisions of Section 2-A read with Section 12 of the Act. The petition is bad on account of delay and laches on the part of the petitioner. The claim petition has become infructuous in view of the re-engagement of the services of the petitioner w.e.f. April, 2009 in pursuance to the settlement dated 17.3.2009 arrived at as per the demand notice dated 06.3.2008. The settlement has already attained the finality.

On merits, it has been owned that the services of the petitioner were engaged in the month of October, 2005 as a daily waged forest worker. However, it has been pleaded that the services of

the petitioner were never terminated. Even no artificial breaks were ever provided to him as alleged. The petitioner used to work intermittently as per his convenience. Forestry works are seasonal in nature depending upon the availability of the work and the budget. The petitioner worked for 30 days in the year 2005, 122 days in the year 2006 and 76 days in the year 2009. After the settlement dated 17.3.2009, no industrial dispute exists between the parties. It stands admitted that the petitioner was re-engaged w.e.f. 16.4.2009 after the settlement. He worked intermittently up-to 30.6.2009 and, thereafter, abandoned the job. Notices dated 08.7.2009, 29.7.2009 and 18.12.2009 were served upon the petitioner calling upon him to resume his duties, but he did not respond. Such notices were served upon the petitioner by the field agencies and by post. Since the petitioner voluntarily left the service, he is precluded from claiming the parity with the workmen who worked in continuity with them (respondents). They (respondents) have in no way breached the terms and conditions of the settlement dated 17.3.2009. The same was implemented in letter and spirit. The services of the petitioner were engaged on account of seasonal forestry works i.e. plantation and nursery etc. in Joginder Nagar Range. After cessation of the season, they (respondents) had no alternative, but to disengage the services of the petitioner and other similarly situated workmen. The petitioner and others used to be re-engaged with the start of the fresh season in the next year. As the petitioner abandoned the job he is not entitled to any protection under the Act. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been infringed. The petition is meritless.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that he never absented from his duties or left the service. No notice was ever received by him. The workmen whose services were engaged by the respondents before the year 2004 were provided the work continuously. All of them have also been regularized. His (petitioner's) services were engaged and disengaged by the respondents on the pretext of the seasonal work.

5. Per order dated 24.8.2012, following issues were struck:—

1. Whether the action of the respondents in providing unlawful/fictional breaks to the petitioner from the year 2005 to 30.6.2009 is illegal and unjustified as alleged? ..OPP.
2. Whether the termination of services of the petitioner on 01.07.2009 by the respondents is illegal and unjustified as alleged? ..OPP.
3. Whether the petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the claim of the petitioner has become infructuous on account of his re-engagement as alleged. If so, its effect? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

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Issue No. 3 :	Yes
Issue No. 4 :	Not pressed
Issue No. 5 :	Not pressed
Relief. :	Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issues No.1 To 3

8. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

9. The petitioner Shri Kishori Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that as per the compromise/settlement dated 17.3.2009 his services were re-engaged by the respondents in the month of April, 2009. He denied that he used to remain absent from duties during the course of employment and no artificial/fictional breaks were given to him. He also denied that after 30.6.2009, the notices, the copies of which are Exts. R1 to R5, were sent to him by the respondents asking him to resume the duties. Further, he denied that he and his mother refused to receive the notice(s) and the work in the forest department is seasonal. He refuted that he is not entitled to the reemployment etc. since he willingly left the job.

10. Conversely, Shri P.L. Gupta, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW6. In his affidavit Ex. RW6/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged in a wrongful manner.

11. Shri Chaman Lal, (RW1) is the Forest Guard. He stated that in the year 2009, he was posted in upper Chauntra Beat. Notice dated 08.7.2009, the copy of which is Ex. R2, was served upon the petitioner by him calling upon him to resume the work. He (RW1) and Shri Love Kumar (forest worker) had visited the house of the petitioner alongwith the notice Ex. R2. The petitioner met them. He refused to receive the notice and sign the same. A report in this regard was made by him (RW1) on the notice Ex. R2. An intimation was also given in this respect by him to the senior officers. Thereafter, a notice dated 29.7.2009 the copy of which is Ex. R4, was issued by him in the name of the petitioner. As per this notice, the petitioner was again asked to join his duties. He (RW1) and Shri Love Kumar (forest worker) once again went to the house of the petitioner alongwith the notice Ex. R4. The petitioner refused to receive the notice and sign it. Reports in this regard were made by him (RW1) on the notice Ex. R4 and to his superiors.

In the cross-examination, he denied that he has no power to issue the notices like Exts. R2 and R4. He had informed his superiors in writing that the petitioner has refused to receive the notices. That riting/record has not been brought by him to the Court.

12. Shri Love Kumar (RW3) lent credence to the version of RW1. He also stated that Ex. R4 and the original of Ex. R2 bear his signatures as a witness.

In the cross-examination, he deposed that he had gone with the Forest Guard to the houses of the petitioner and Shri Ravi Dass (workman) only.

13. Shri Hari Ram (RW2) is posted as Block Forest Officer, Chauntra. He testified that the report dated 15.7.2009 the copy of which is Ex. R3, was forwarded by him to the Range Officer. This report was made by him (RW2) on the basis of the report given by the Forest Guard Shri Chaman Lal (RW1).

In the cross-examination, he admitted that the notices were given to the petitioner and Shri Ravi Dass (workman) calling upon them to resume their duties.

14. Shri Kamal Jaswal (RW4) is Range Officer, Joginder Nagar. He stated that on 18.12.2009 a notice was given by him to the petitioner calling upon him to resume the work. Ex. R5 is the copy of the said notice. Shri Anil Kumar, Forest Guard had visited the house of the petitioner alongwith the notice Ex. R5. He reported that the mother of the petitioner was there at home who met him and refused to receive the notice. Thereafter, Shri Hari Ram (Block Officer) and Shri Anil Kumar (Forest Guard) went to the house of the petitioner again alongwith the notice Ex. R5. They too, reported that the mother of the petitioner refused to receive the notice in the presence of Smt. Aruna Devi (Ward Panch) and Shri Joginder Singh. Another notice was sent by him (RW4) in the month of January, 2011 to the petitioner asking him to resume the work. Ex. R1 is the copy of that notice. The notice was sent under registered cover. Ex. RW4/A is the copy of the despatch register.

In the cross-examination, he stated that the registered notice/letter was not received back undelivered. It was received by the addressee (petitioner). The petitioner did not join his duties despite repeated calls.

15. RW5 is Shri Anil Kumar, Forest Guard. He corroborated the version of the respondents. He too stated that he had visited the house of the petitioner on 9.12.2009 and 21.12.2009 with the notice Ex.R5. The mother of the petitioner met them who refused to receive the notice.

In the cross-examination, he denied that the mother of the petitioner had expired earlier to the year 2009 and he (RW5) never went to the house of the petitioner. He also denied that wrong reports were made.

16. Ex. PW1/B is the copy of the demand notice dated 03.7.2009 served upon the respondents by the petitioner.

17. Ex. PW1/C is the copy of the demand notice dated 06.3.2008 sent by the petitioner to the respondents.

18. Ex. PW1/D is the copy of the settlement dated 17.3.2009 which was arrived at between the parties before the Labour Officer-cum-Conciliation Officer, Mandi Zone Mandi.

19. Exts. RW6/B, C and D are the mandays charts relating to Smt. Naro Devi, Smt. Kanta Devi and the petitioner respectively.

20. Ex. RX is the copy of divisional level seniority list of casual labour/daily wagers of Joginder Nagar Forest Division as it stood on 31.10.2012.

21. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager/casual labourer in the month of October, 2005 and he worked as such up-to 30.6.2009. So far as the alleged disengagement of the services of the petitioner by the respondents in the month of January, 2007 is concerned, the same pales into insignificance in view of the

settlement dated 17.3.2009, the copy of which is Ex.PW1/D. It is an admitted fact that in obedience to the settlement dated 17.3.2009, the services of the petitioner were re-engaged by the respondents on 16th April, 2009.

22. The respondents have not placed on the record any document evidencing that the services of the petitioner were engaged for seasonal forestry works from time to time. In the demand notices dated 03.7.2009 and 06.3.2008 the copies of which are Exts. PW1/B and C, the petitioner nowhere mentioned that from the date of his initial engagement to 30.6.2009, artificial/fictional breaks were provided to him by the respondents. Therefore, this contention of the petitioner seems to be totally false and merely an after thought. Otherwise too, the issue regarding giving the fictional breaks was not raised by the petitioner at the time of the settlement dated 17.3.2009 (Ex. PW1/D). For this reason, the intentional breaks, if any, provided by the respondents to the petitioner from the date of his initial engagement up-to the date of his re-engagement i.e. 16.4.2009 cannot be looked into by this Court.

23. The version of the petitioner is that on 1st July, 2009 his services were wrongly and illegally terminated by the respondents by a verbal order. While denying the said fact the respondents have pleaded that the petitioner used to work as per his sweet will. After 30.6.2009, he abandoned the job and did not join his duties despite the issuance of various notices, the copies of which are Exts. R1 to R5, because of which, he is not entitled to any protection under the Act.

24. The assertion of the respondents that the petitioner left the job of his own accord and free volition appears to be true in view of the overwhelming evidence on the record coupled with the working pattern of the petitioner as detailed in the mandays chart Ex. RW6/D. From the statements made by RWs 1 to 6, it can be gathered that various notices were sent to the petitioner through the field officers and by post calling upon him to resume his duties, but of no avail. The petitioner and his mother refused to receive the notices in the presence of the witnesses. Many of the facts stated by RWs 1 to 6 regarding the refusal of the petitioner and his mother to receive the notices have not been challenged during the cross-examination. Therefore, they are presumed to be admitted by the petitioner. Moreover, a question was put in the suggestive form to Shri Anil Kumar (RW5) to the effect that the mother of the petitioner had left the land of the dying earlier to the year 2009 because of which the question of her refusing the receipt of the notice Ex.R5 on 19 and 21 December, 2009 does not arise. If the mother of the petitioner had breathed her last prior to the year 2009 then why no death certificate evidencing the said fact has been placed on the record by him (petitioner). The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. Since a material document has been withheld by the petitioner, an adverse inference under Section 114 (g) of the Indian Evidence Act has to be drawn against him.

25. There is satiable evidence on the file to establish that the services of the petitioner were never terminated by the respondents at any point of time. He voluntarily left the job. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim petition.

26. That being so, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The petitioner is not entitled to any relief.

27. These issues are decided against the petitioner and in favour of his opponents.

#### **Issues No. 4 and 5**

28. Not pressed.

#### **Relief (Issue No.6)**

29. Taking into account my findings on the issues No.1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference/direct claim petition is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 104/2011  
Date of Institution : 27.6.2011  
Date of Decision : 22.04.2013

Smt. Naino Devi w/o Shri Duni Chand, r/o Village & P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

Divisional Forest Officer, Forest Division Pangi, Killar, District Chamba, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
: Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Naino Devi W/O Shri Duni Chand by Divisional Forest Officer, Forest Division Pangi, Killar, District Chamba, H.P. w.e.f. Year, 2004 and retaining the junior workmen, as alleged by worker is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were initially engaged as a daily waged beldar on muster roll basis by the respondent in the

month of May, 1998. She continuously worked as such up-to September, 2004 in Forest Range, Sach. During the period of her engagement, she completed more than 160 days of work (Pangi is tribal area) in each and every calendar year of her employment. In the month of October, 2004, her services were terminated by the respondent by a verbal order. During the period of her employment, her work and conduct was satisfactory. Before the termination of her services, neither any notice was given to her nor the retrenchment compensation was paid. At the time of her retrenchment, the persons junior to her were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. The names of juniors retained in service by the respondent are S/Sh. Ram Charan and Tilak Raj etc. Not only this, after her termination new/fresh hands have been engaged by the respondent. She was not given an opportunity of re-employment. She never remained absent from work from the date of her employment till the date of final termination. During the period of her engagement, the respondent/department used to provide her the artificial breaks so that she does not complete the criteria of 160 days of work for the purpose of the regularization of her services. The junior workmen who are the favorites of the respondent were allowed to work for 160 days or more by the respondent. The period of artificial/fictional breaks is required to be counted for the purpose of continuous service as per Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). Earlier also, her services were disengaged by the respondent by an oral order in the year 2002. Against the illegal termination order, she preferred Original Application No.2893/2002 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. The Hon'ble Administrative Tribunal passed an order/judgment dated 06.5.2003 directing the respondent to consider her (petitioner) for re-engagement in case she reports for work at a place where the work may be available. She was directed to report for duty within a period of 10 days from the date of the order. Accordingly, her services were re-engaged by the respondent/department on muster roll basis in the month of May, 2003 and she worked continuously up-to September, 2004. Her services have been dispensed with once again in the month of October, 2004 without assigning any reason. If her services would not have been disengaged she would have become entitled to the regularization as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhyay's case. From the date of her disengagement, she is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(a) The oral orders of termination/retrenchment of my services passed by the respondent w.e.f. October, 2004 be set-aside being illegal, arbitrary and un-justified.
- (b) To direct the respondent to re-instate the services of petitioner w.e.f. October, 2004 alongwith full back wages, seniority including continuity of services as the petitioner remained un-employed since the date of illegal retrenchment/termination of services.
- (c) To direct the respondent to count the period of intermittent/frictional breaks given in the entire service to the applicant from time to time be counted towards the calculation of continuous service of 160 days in each year (as laid down for the tribal area of Pangi) under section 25-B of ID Act and regularize the services of the petitioner w.e.f. 01.01.06/01.01.08 under the 8/10 year regularization policy of the Govt. along with all consequential benefits alike the benefits given to my junior workers.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) To direct the respondent to re-engage petitioner on Muster Roll basis pending final decision of the case.

(f) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, the relationship of employer and employee stands admitted. It has been pleaded that the services of the petitioner were engaged as a daily paid worker. She worked intermittently from the month of December, 1998 to August, 1999. Thereafter, she left the job voluntarily. Neither the services of the petitioner were ever disengaged/terminated nor the artificial breaks were given to her at any point of time. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner used to attend the forestry work casually as per her convenience. It has been owned that the Original Application No. 2893/2002 was preferred by the petitioner. After the pronouncement of the order dated 06.5.2003 by the Hon'ble Administrative Tribunal the petitioner continued to work. In the month of October, 2004, she abandoned the job of her own. Since the petitioner willingly left the service, there is no question of issuing any notice to her or paying the retrenchment compensation. Forestry works are seasonal and of casual nature. The labourers are engaged or disengaged as per the availability of the works and the funds. Once the plantation/nursery work is completed all activities are discontinued in the area except supervision for protection which is carried out by the permanent staff. The labourers are generally not willing to work at another place after the completion of the work at a particular place. The petitioner was directed to work at a new place which was only six-seven kilometers away from her previous place of work. She failed to join at the new place of posting and left the job. The petitioner is not entitled to the regularization as claimed. She is debarred from claiming parity with the workmen who worked in continuity with him (respondent). The principle of 'last come first go' was strictly followed. No new/fresh hands have been engaged after the alleged termination of the services of the petitioner. She is gainfully employed as an agriculturist. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the statement of claim/petition and refuted the objections put forth by the respondent. It has been disputed that she abandoned the job.

5. Vide order dated 29.12.2011, following issues were struck by my Id. Predecessor:—

1. Whether the disengagement of the petitioner w.e.f. year, 2004 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? ..OPP.
2. Whether the claim petition is not maintainable as alleged. If so, to what effect? .. OPR.
3. Whether the reference suffers from vice of delay and laches as alleged. If so, to what effect? ..OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Partly Yes, Partly No

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Smt. Naino Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were re-engaged by the respondent as per the order passed by the Hon'ble Administrative Tribunal. She denied that she willingly left the job. She earns her livelihood by doing the daily drudgery in the village.

9. Conversely, Shri Yash Paul Garneria, Divisional Forest Officer, Pangi at Killar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. He also stated that as per the record the services of the petitioner were initially engaged in the month of July, 1998.

In the cross-examination, he deposed that at the time of the engagement of the services of Smt. Prem Dei and Smt. Lal Dei, a notice of re-employment was not given to the petitioner. When the claimant/petitioner left the job, no notice was served upon her asking her to resume the work. Even no departmental proceedings were initiated against the petitioner. He refuted that the services of the petitioner were disengaged in a wrongful manner.

10. Mark-A is the copy of the order dated 6th May, 2003 pronounced by the Hon'ble Administrative Tribunal in O.A. No.2893/2002 titled as Shri Tilak Raj and others versus State of H.P. through Secretary (Forests) to the Government of Himachal Pradesh, Shimla and others. It corresponds to Ex. RW1/B.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Exts. RW1/C to F are the mandays chart pertaining to Shri Ram Charan, Shri Tilak Raj, Smt. Prem Dei and Smt. Kushla Devi respectively. All these persons are working as daily wagers under the respondent.

13. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks to the petitioner by the respondent during the period of her employment. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per Section 10(4) of the Act.

14. It is not a disputed fact that the petitioner had preferred O.A. No.2893/2002 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. Her services were re-engaged by the respondent in obedience to the order dated May 6, 2003 rendered by the Hon'ble Administrative Tribunal. The copies of the said order are Mark-A and Ex. RW1/B.

15. From the statement made by the respondent (RW1) and the mandays chart Ex. RW1/A it can be gathered that the services of the petitioner were initially engaged by the respondent as a

daily wage in the month of July, 1998 and she worked intermittently up-to the month of October, 2004. In October, 2004, the petitioner had worked for 15 days. The version of the petitioner is that in the month of October, 2004, her services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner used to work as per her sweet will. In the month of October, 2004, she left the service of her own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon her to resume the duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/A clarifies that the petitioner did not complete 160 days of work (Pangi is tribal area) in a block of 12 calendar months preceding the date/month of her termination i.e. October, 2004. For this reason, the provisions of Section 25-F of the Act are not attracted in this case. The respondent has placed on the file the divisional level seniority list of daily waged labourers. The name of the petitioner figures at serial No.4 of this list. Its perusal unfolds that at the time of the termination of the services of the petitioner the persons junior to her were retained in service by the respondent. The latter failed to adhere to the principle of 'last come first go'. Not only this after the disengagement of the services of the petitioner in the month of October, 2004, S/Sh. Jalam Singh and Ram Singh were appointed by the respondent in the month of March, 2006. The services of Smt. Prem Dei etc were engaged in the month of June, 2008 and thereafter. There is nothing on the record to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent. Therefore, it can be safely said that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his/her retrenchment.

18. This issue is decided accordingly.

## **Issue No. 2**

19. Not pressed.

## **Issue No. 3**

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can

be taken into account by the Court while granting him/her the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

22. While testifying in the Court as PW1, the petitioner has given her age as 43 years. It is common knowledge that a young lady like the petitioner will not sit at home during the period she is/was out of the service. Moreover, during her cross-examination, the petitioner (PW1) admitted that she makes both the ends meet by working as a labourer in the village. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

23. This issue is decided in favour of the petitioner and against the respondent.

#### **Relief (Issue No. 4)**

24. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the continuity and seniority in service from the date/month of her illegal termination i.e. October, 2004 except back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 229/2012  
Date of Institution : 01.05.2012  
Date of Decision : 03.04.2013

Smt. Neelam Kumari w/o Shri Narinder Kumar, r/o House No.235, Ward No.5, Village Basdehda, Mehatpur, Tehsil and District Una, H.P. *..Petitioner.*

*Versus*

The Managing Director, M/S Sanjeev Textiles Corporation, Plot No. 2/2, Mehatpur Industrial Area, District Una, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR.

For the Respondent : Sh. Rakesh Chaudhary, Adv.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Neelam Kumari W/O Shri Narinder Kumar R/O House No.-235, Ward No.-5, Village Basdehda, Mehatpur, Tehsil and District Una, H.P. by the Managing Director, M/S Sanjeev Textiles Corporation, Plot No.2/2, Mehatpur Industrial Area, District Una, H.P. w.e.f. 11-08-2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a Packer/Helper by the respondent on 7th February, 2007. She continuously worked as such up-to 10.8.2010. Her monthly salary was Rs.3,300/-. On 11th August, 2010, her services were terminated by the respondent by a verbal order. Before the termination of her services, neither any notice was given to her nor she was informed about the misconduct if any. At the time of her retrenchment, the persons junior to her were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. Not only this, the respondent did not take any permission from the State Government to disengage her services. The same amounts to unfair labour practice. Demand notices dated 15.11.2010 and 03.5.2011 were served upon the respondent by her, but in vain. The respondent is a registered concern. More than 50 employees are working in the factory out of whom approximately 15 are the ladies. From the date of her retrenchment, she is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 11.8.2010 be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has no cause of action. She has suppressed the true and material facts from the Court. The petitioner has not approached the Court/Tribunal with clean hands. She is not entitled to any kind of relief.

On merits, paras 1 to 8 of the reply read thus:—“1. That para no.1 of the petition is wrong, incorrect hence denied except the date of joining and withdrawal of her services. It is pertinent to mention that the petitioner was appointed at the salary of Rs.2250/- per month on 7.2.2007 and she applied for the job of helper/packer under ‘Himachali employees quota’ giving her address House no.60 ward No.7 Basdehra-Mehatpur (Una). On 8.1.2008 she submitted her residence certificate issued by Vice President Municipal Council Una Sh. Janak Raj Khazanchi to prove herself as permanent resident of Himachal Pradesh. Later on G.M. Industrial Department called the bonafide certificates of all the employees who were working in Himachali Employees quota. The petitioner was requested number of times by the respondent to furnish her bonafide certificate but she failed to submit the same. Finding no way out the respondent issued one notice to the petitioner on 14.7.2010 to produce her bonafide certificate within one month and the notice was personally

delivered to her and office copy was signed by her. Later on one another notice 8.10.2010 was served through regd. Post to the petitioner qua the reply of letter dated 14.7.2010 and submission of her Bonafide certificate but the petitioner remained voluntarily absent from 11.8.2010. The petitioner was requested to receive her salary for the month of July, 2010. The petitioner came on 28.8.2010 and returned back with the notice that 'No chair was provided to me, hence I am going back'. The conduct of the petitioner clearly shows that she was not interested to continue her job. She remained absent from 11.8.2010 without any information and prior sanction from the respondent till her termination on 8.10.2010. False allegations have been concocted by the petitioner against the answering respondent which otherwise have no legal basis.

2. That para no.2 of the petition is absolutely wrong and denied. Letter sent to the Labour Commissioner is denied for want of knowledge.

3. That para no.3 of the petition is not denied qua the notice served by the Labour Inspector. It is submitted that the same notice was properly replied by the respondent and the respondent offered to pay all the salary till 10.8.2010. It is further submitted that all the salary Rs.3440/- were paid to the petitioner through banker's cheque no.436647 dated 4.8.2011 through registered post letter dated 4.8.2011 and the same cheque was duly received by the petitioner.

4. That para no.4 of the petition is wrong, incorrect hence denied except the unit registered with H.P. Govt. and qua the identity card. It is further submitted that in the month of February, 2007 only 22 employees were working in the unit and in the month of August, 2010 only 28 employees were working in the industry.

5. That para No. 5 of the petition is wrong, incorrect hence denied. It is submitted that the petitioner procured the job on false information and later on produced the false documents qua her permanent residence proof as Himachali. Since the petitioner could not furnish her Bonafide certificate she herself withdrew her services from 10.8.2010 without any information to the authorities and due to aforesaid reason the services of the petitioner were terminated through regd. Notice dated 8.10.2010.

6. That para No. 6 of the petition is wrong, incorrect hence denied.

7. That para No.7 of the petition is wrong, incorrect hence denied. It is submitted that the petitioner was working as labourer with mason and getting wages @ Rs.250/- per day. 8. That para No. 8 of the petition is wrong, incorrect hence denied. It is further submitted that the petitioner herself is defaulter and she is not entitled to any relief as per Industrial Disputes Act, 1947".

In these circumstances, the respondent prays that the petition in hand being false, frivolous and vexatious be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been pleaded that at the time of her appointment, all the necessary documents were furnished by her. No notice dated 14.7.2010 was given to her by the respondent. Her services were disengaged on 11.8.2010. The cheque worth Rs.3440/- dated 04.8.2011 was sent to her one year after the termination of her services. That cheque has not been got encashed by her. She is a bonafide resident of the State of Himachal Pradesh.

5. Per order dated 22.9.2012, following issues were struck:—

1. Whether the services of the petitioner have been terminated by the respondent w.e.f. 11.8.2010 wrongly and illegally as alleged? ..OPP.

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2. Whether the petitioner has a cause of action? ..OPP.
  3. Whether the petition is not maintainable in the present form? ..OPR.
  4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
  5. Relief.
  6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No. 1**

8. The petitioner, Smt. Neelam Kumari stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she had joined the service on 07.2.2007. Before the appointment the resume/particulars Ex. R1 was submitted by her. It bears her signatures in the red circle. Wages register Ex. R2 has also been signed by her. She admitted that the certificate Ex. R3 was handed over by her to the respondent. Her in-laws are from Amritsar (Punjab). Self stated, her parental house is at Una. She studied at Una and is residing there for the last 12-13 years. She admitted that her husband is a permanent resident of Amritsar. She also admitted that she was given the employment in the quota meant for the residents of the State of Himachal Pradesh. She denied that Mark-A (later on exhibited as Ex. RW1/F) i.e. the letter/notice dated 14.7.2010 served upon her by the respondent bears her signatures. At the time of joining the service, she had produced the certificate Ex. R3 evidencing that she is a bonafide resident of the State of Himachal Pradesh. No other certificate was furnished by her as proof of her residence. On 28.8.2010, she had given in writing that since a chair has not been provided to her in the premises of the factory, she is going back. Ex. R4 is the copy of the writing dated 28.8.2010. Volunteered, her chair was snatched by the respondent and the persons present on the gate of the factory got Ex. R4 written from her forcibly. She did not lodge any complaint to the effect that she scribed Ex. R4 under duress. When she left the service, she was drawing Rs.3500/- per mensem as salary. She admitted that a registered letter dated 08.10.2010 was received by her. Self stated, the said letter was delivered to her after 13 months. The cheque was received by her. She did not get it encashed. She denied that her services were terminated as she gained the employment in a wrongful manner and did not supply the Himachali bonafide resident certificate to her employer. After abandoning the job, she works privately in the houses of different persons. She denied that she has instituted a phoney petition.

9. Conversely, Shri Vishal Gupta, General Manager, M/S Sanjeev Textiles Corporation, Mehatpur testified as RW1. Ex. RW1/A is the affidavit preferred by him as per Order 18 Rule 4 CPC. Ex. RW1/B is the copy of the power of attorney executed in his name by Shri Sandeep

Mahajan, Managing Director (respondent). He (RW1) corroborated on oath the contents of the reply.

In the cross-examination, he admitted that the petitioner served continuously from 07.2.2007 to 10.8.2010. He denied that the services of the petitioner were disengaged in a wrongful manner. Before the termination of the services of the petitioner, neither she was charge-sheeted nor an inquiry was conducted against her. 9A RW2 is Shri Vinod Singh, Plant Manager of the respondent. He lent credence to the version of the respondent. Ex. RW2/A is the affidavit filed by him in terms of Order 18 Rule 4 CPC. He also stated that on 14.7.2010, the letter Ex. RW1/F was handed over to the petitioner who signed the same in his presence. The signatures of the petitioner are there in the red circle.

In his cross-examination, he denied that being an employee of the respondent, he is telling the lies.

10. Ex. PW1/B is the copy of the demand notice dated 03.5.2011 served upon the respondent by the petitioner under Section 2-A of the Act.

11. Ex. PW1/C is the copy of the identity card issued in the name of the petitioner by the respondent.

12. Ex. PW1/D is the copy of the wage slip relating to the petitioner.

13. Exts. RW1/C and D are the copies of the register of payment of wages maintained by the respondent.

14. Ex. RW1/E is the copy of a letter dated 9th January, 2009 written to the respondent by the General Manager, District Industries Centre Una, District Una. Vide this letter, the General Manager asked the respondent to furnish different information including the bonafide Himachali resident certificates pertaining to the employees.

15. Ex. RW1/G is the copy of a letter dated 08.10.2010 which was sent by the respondent to the petitioner under registered cover. In this letter, it was mentioned that neither the petitioner has submitted the bonafide resident certificate till date nor she is attending her duties from 11.8.2010 onwards. As per this letter, the services of the petitioner were terminated and she was asked to collect her dues.

16. Ex. RW1/H is the copy of registered letter dated 04.8.2011 sent by the respondent to the petitioner. Per this letter, a banker's cheque towards the pending salary of the petitioner was forwarded to her.

17. From the pleadings of the parties and the evidence available on the record, it can be gathered that the below mentioned facts are not in dispute.

- (i) The services of the petitioner were engaged as a Helper/Packer by the respondent on 07.2.2007.
- (ii) he worked continuously as such up-to 10.8.2010.
- (iii) The petitioner was employed in the quota of the employees meant for the bonafide residents of Himachal Pradesh.
- (iv) At the time of the appointment, the petitioner had furnished her resume in the application/form Ex. R1 showing her to be a resident of Basdehda, Mehatpur, District

Una, and (v) Certificate Ex. R3 issued by Shri Janak Raj Khazanchi, Vice President, Municipal Council, Una was handed over by the petitioner to the respondent in proof of the fact that she is a permanent resident of Ward No.5, Una.

18. It is an admitted fact that till date the petitioner has not supplied a certificate issued by the competent authority viz. the Tehsildar etc. to the respondent evidencing that she is a bonafide resident of Himachal Pradesh. The petitioner (PW1) in her cross-examination admitted that her husband is a permanent resident of Amritsar (Punjab) and her in-laws are at Amritsar.

19. As already mentioned the petitioner got the appointment in the quota of employees meant for the bonafide residents of Himachal Pradesh. The respondent received a letter dated 09.1.2009 (Ex.RW1/E) from the General Manager, District Industries Centre Una, District Una. Vide this letter the General Manager asked the respondent to furnish bonafide residence certificates of the employees whose services have been engaged in the Himachali quota. After the receipt of this letter, a letter dated 14.7.2010 (Ex. RW1/F) was written by the respondent to the petitioner asking her to supply her bonafide Himachali resident certificate within a month which she failed to do. True it is that the petitioner (PW1) has denied the receipt of the letter Ex. RW1/F. This assertion of the petitioner appears to be false in view of the depositions made by RWs 1 and 2. Shri Vinod Singh (RW2) categorically stated that the petitioner had signed Ex. RW1/F in his presence as a token of its receipt. Otherwise too, if one compares the signatures of the petitioner appearing on various documents alongwith her signatures in the red circle on Ex.RW1/F, it becomes clear that Ex. RW1/F was duly received by the petitioner and she had acknowledged its receipt.

20. The evidence available on the record goes to show that the petitioner procured the employment fraudulently and by misrepresentation of the facts. Her services could not be engaged in the quota of employees meant for the bonafide residents of Himachal Pradesh. Simply because neither the petitioner was charge-sheeted nor an inquiry was conducted against her before the termination of her services, the same will not come to her rescue she secured the employment fraudulently and by misrepresentation of the facts. Setting aside the termination of the services of the petitioner on the ground of none conducting the inquiry against her and ordering her reinstatement in service will perpetuate the wrong which is not permissible under the law.

21. The admissions made by the petitioner (PW1) in the later part of her cross-examination go to show that infact she had left the job voluntarily. To my mind, the petitioner abandoned the job after receipt of the letter dated 14.7.2010 (Ex. RW1/F) as she failed to furnish the bonafide Himachali resident certificate despite repeated requests. The petitioner (PW1) admitted that on 28.8.2010, she had written Ex. R4 to the effect that she is leaving the factory premises as she was not provided the chair. The contention of the petitioner that the gate men forced her to write Ex. R4 seems to be totally false and baseless. If the petitioner was forced to write Ex. R4 then why she did not lodge a report to that effect with any of the authorities or make a mention qua the same in her petition/statement of claim and the rejoinder? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth.

22. It appears to me that the avarice of the petitioner to grab the job and money has forced her to file a totally false and vexatious claim. She is leveling the allegations suiting to her hallucination just to derive undue advantage(s). Merely, because the petitioner worked for a period of more than 240 days in a block of 12 calendar months anterior to the date of her termination, the same will not benefit her as her employment itself was illegal and obtained fraudulently. No provision of the Act has been flouted by the respondent. The petitioner is not entitled to any relief.

23. This issue is decided against the petitioner and in favour of the respondent.

**Issues No. 2 to 4**

24. Taking into account my findings on issue No.1, it is held that the petitioner has no cause of action. The claim petition is not maintainable in the present form. The claimant/petitioner has not come to the Court with clean hands. She is not entitled to the indulgence of the Court.

25. These issues are also decided against the petitioner and in favour of the respondent.

**Relief (Issue No. 5)**

26. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 217/2012  
Date of Institution : 17.4.2012  
Date of Decision : 04.04.2013

Shri Pawan Kumar s/o Shri Gurditta, r/o Village Millah, P.O. Singi, Tehsil and Distt.  
Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Chamba, Distt. Chamba, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
: Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the services of Sh. Pawan Kumar S/O Sh. Gurditta, Vill. Millah P.O. Singi Tehsil and Distt. Chamba, H.P. from time to time during the years 1997 to 2006 by the Executive Engineer, I&PH Division, Chamba Distt. Chamba, H.P. without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of April, 1997 and is still working as such.
2. That the petitioner worked continuously with fictional breaks w.e.f. 4/1997 to 4/2006. The department has given artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted and be kept on tenterhooks and has been exploited by the respondent department.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularisation of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.
4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the month of 4/1997 to April 2006. Whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.
5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and

petitioner also would have been permitted to work for full month instead of 18 days in months from the month April 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.

7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.
9. That the applicant has spotless services with the respondent and has never been charge-sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India. Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:—

**Relief Sought:—**

- (a) The period of breaks given by the respondent from time to time between the year 4/1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 4/1997 to 2006.

- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 9 of the reply read thus:—

- "1. That the contents of this para are not disputed.
2. That the contents of para 2 of the claim petitioner are wrong hence denied A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to non-availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with inn the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.
3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.
4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement

by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is besed where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.

- 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.
7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.
9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
  4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
  - Issue No. 1 : Yes
  - Issue No. 2 : Not pressed
  - Issue No. 3 : Not pressed
  - Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No. 1**

8. The petitioner Shri Pawan Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 upto date.

15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division, Udaipur, Division Chamba.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of April, 1997 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.4.1997.

18. The version of the petitioner is that from April, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent, then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to April, 2006 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

21. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is decided in favour of the petitioner and against the respondent.

### **Issues No. 2 and 3**

23. Not pressed

### **Relief (Issue No. 4)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to April, 2006 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made

clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 277/2010  
Date of Institution : 30.12.2010  
Date of Decision : 11.04.2013

President, Hiamchal Pradesh Red Cross Karamchari Sangh, C/O District Red Cross Society,  
Dharamshala, Distt. Kangra, H.P. ...Petitioner.

*Versus*

1. The Chairman, Managing Committee, Indian Red Cross Society, H.P. State Branch,  
Shimla-2.

2. The Deputy Commissioner-cum-Chairman, District Red Cross Society, Dharamshala,  
Distt. Kangra, H.P.

3. The Secretary, District Red Cross Society, Dharamshala, Distt. Kangra, H.P.  
..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner(s) : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondents : Sh. S.C. Vaid, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the demands raised vide demand notice dated 06.8.2009 (Copy-Enclosed) by President, Himachal Pradesh Red Cross Karamchari Sangh, C/O District Red Cross Society,

Dharamshala, Distt. Kangra before (i) The Chairman, Managing Committee, Indian Red Cross Society, H.P. State Branch, Shimla-2. (ii) The Deputy Commissioner-cum-Chairman, District Red Cross Society, Dharamshala, Distt. Kangra, H.P. (iii) The Secretary, District Red Cross Society, Dharamshala, Distt. Kangra, H.P. are legal and maintainable? If yes, to what service benefits and relief the concerned workers of the above Society are entitled to as per demand notice dated 06.8.2009? If not, what are its legal effects?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that on 02.8.2009, a meeting of the Karamchari Sangh was convened. It was presided over by the President of the Sangh namely Shri Kashmir Singh. Long discussions regarding different types of demands were held. Thereafter, the Karamchari Sangh decided to give a demand notice and raised an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The demand notice was duly served upon the respondents. A copy of the demand notice was forwarded to the Labour-cum-Conciliation Officer, Dharamshala, who initiated the conciliation proceedings. The demands raised by the Sangh/Union were not accepted by the respondents, where after a failure report was sent to the appropriate Government by the Labour-cum-Conciliation Officer, Dharamshala.

3. The statement of claim/demand reads thus:—

“1. That the demand notice under Section 2-K raised by the union against the respondent which is covered in the III Schedule of Industrial Disputes Act, 1947. The demands raised by the union in his demand charter dated 06-08-2009 as under.

(i) That the workmen union has demanded in demand No. 1 that all the workmen as Driver, First Aid Inspector, Lab Technician, Assistant Lab Technician, Peon, Clerk and Computer Operator working under the respondent No. 2 & 3 and they have been given the less minimum wages as fixed by the State Government from time to time, hence they are entitled minimum salary/wages in the category of peon, sweeper, Chowkidar w.e.f. 01-01-2007 @ 75/- Rs per day, 01-01-2008 @ 100/- Rs per day and 01-03-2009 @ 110/- Rs per day and in the case of Clerk, Assistant Lab Technician Rs.4200/- per month w.e.f. 01-03-2009, Driver Rs.4500/- per month and Lab Technician and Computer Operator Rs.5280/- per month. Hence all the above categories are entitled difference of arrear from 01-01-2007 to onwards.

2. That the demand no 2 raised by the union and demanded that all the workmen of the respondent working under him are entitled the benefits of Employees Provident Fund and Miscellaneous Provisions Act, 1952 whereas the provident fund act is applicable to the respondents from the date of establishment the branch in Himachal Pradesh and same has been covered under Section 1 (3) (b) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 whereas the respondents have been engaged the more than 20 workmen in the State of Himachal Pradesh, hence the workmen of respondent no 2 & 3 are entitled the benefit of Provident Fund from the date of their joining to onwards @ 10% and revised 12% and respondents are liable to deposit the both contribution before the Provident Fund Commissioner, Shimla.

3. That the demand no 3 raised by the union that they have been not granted the pay scale as like the employees engaged by the respondent No. 1. The pay scale granted by respondent No. 1 to its employees as per the state government pattern

as like Secretary, Sr Clerk, Driver, Peon and others. The photocopy of pay scale and allowances which has been issued by H.P. Red Cross Society Shimla is enclosed herewith for ready reference. Hence the workmen namely S/Sh Kashmir Singh Rana (Senior Lab Technician), Sushil Kumar Bakshi (Senior Lab Technician), Rakesh Kumar (Lab Technician), Madhu Bala (Senior Lab Technician), Dhian Chand (Assistant Lab Technician), Amit Kumar (Assistant Lab Technician) and Sapna (Peon) are entitled the same pay scale as granted to the employees of Indian Red Cross Societies Shimla from the date of they have been granted the pay scale to onwards as peon, Chowkidar, sweeper 2520-4140/- w.e.f. 01-01-1996, Clerk/Assistant Lab Technician 3120-5160/-, Senior Lab Technician/Lab Technician 5000-9200/- and Driver 3330-6200/- as per State Government Pattern w.e.f. 01-01-1996 and revised pay scale w.e.f. 01-01-2006 to onwards along with arrear.

- (i) That as per the annual general meeting held on 6<sup>th</sup> October, 2001 at Rajbhawan, Shimla under the President ship of Dr Suraj Bhan His Excellency, the Governor, Himachal Pradesh and the item no 6 in which the some workers of the society have met to the General Secretary of the society and they have requested to regularize their services and they have been pointed out that one person who have been worked only 2 and 3 years have been regularized by the society and it is further decided in the meeting that the service rules of the H.P. Government for its employees/workers should henceforth be followed. No worker/employees should be recruited and promoted beyond these rule.
4. That the demand no 4 raised by the union and demanded to provide the constitution of the society and service (R&P) rules made by the society to its employees.
5. That the demand no 5 raised by the union and demanded the female workers are working with the respondents no 2 & 3 are entitled the benefits of Maternity Benefit Act, 1961 and the state government has granted the special leaves to the female workers on account of Raksha Bandhan, Bhiya Dujje and Karvachoth which are mandatory but not given the such benefits to its female employees by the respondent no 2 & 3 hence all the female employees of the respondent no 2 & 3 are entitled such benefits in future.
6. That the demand no 6 raised by the union their services may be regularized after completion of 10 year continuous service as per the scheme framed by the government from time to time as per the decision of Mool Raj Upadhaya whereas the pay scale and service rules has been adopted by the respondents as per the pattern of state government, hence all the eligible employees who have been completed 10 year continuous service may be grant the regular pay scale and also grant regular/work charge status from the due date.
7. That the demand No. 7 raised by the union they are not granted the benefits of earned leave, casual leave and medical leave whereas the respondent is liable to give the such benefits to its employees whereas the employees working in the District Red Cross Society Shimla are given the regular benefits under CCS and CCA Rules as well as the pattern of state government employees.
8. That the demand no 8 raised by the union in which they have been demanded that during the pendency of this case no sangh leader or members have been victimize,

discriminate, terminated, transfer and re-designated. It is submitted here during the pendency of this case before the Hon'ble this Tribunal the service condition of the workmen have been changed without getting the prior permission from the Hon'ble this Tribunal whereas the services of all the workmen transferred from the building of respondent no 2 & 3 to the Government Hospital and the President of Union has also harassed, victimized by the respondent no 3 by intentionally due to this case and some time he has been pressurized by the respondent no 3 (Secretary) to withdrawal the case hence the same has been violated under Section 33-A of the Industrial Disputes Act, 1947. In this connection a simple application has been filed by the union before the Hon'ble this Tribunal and the same may be read under Section 151 CPC and the same has been fixed on 30-03-2011 for reply. It is submitted here that the person who were engaged by the society as lab technician in his building now malaofiedly transferred in the government hospital Dharamshala and Nagrota Bagwan and now they are working under the Rogi Kalyan Samiti which is constituted by State Government in all government hospitals and presently all the workmen are working under the hospital authorities.

9. That the demand no 9 raised by the union to provide them a state level seniority list to its regular/temporary employees working under the respondents.

#### **Relief:**

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be determine and adjudicate the demands of the union as per demand notice dated 06-08-2009 and directed to respondent to granted the benefits to its employees as per award in the interest of justice and justice be done".

4. On notice, since the respondent No.1 refused the service, he was ordered to be heard exparte per order dated 16.5.2011.

5. The remaining respondents viz. respondents No. 2 and 3 submitted joint reply controverting the averments made in the petition/statement of claim. The reply is reproduced below verbatim for ready reference:—

#### **Preliminary Objectives:—**

1. That the Demand notice under Section 2-K- of section Industrial Dispute Act. 1947 is not tenable.
2. That the Red Cross Society is an organization wholly engaged in charitable, social & philanthropic service of the public does not cover the definition as per section 2(J) (ii) (b) (4) of Industrial Disputes Act. 1947.
3. That the matter in dispute is not triable by the labour officer-cum-conciliation officer under Industrial Dispute Act. 1947.
4. That the alleged dispute has already been decided by the Hon'ble Presiding Judge-cum-H.P. Industrial Tribunal-cum-Labour Court, Dharamshala vide order 22-10-2005. The copy of the order dated 22-10-2005 is annexed herewith in annexure R-I and subsequently filed an application U/S 29 of the Industrial Dispute Act. 1947 which was dismissed vide order dated 15.03.2007 by the

Hon'ble Presiding Judge H.P. Industrial Tribunal-cum-Labour Court Dharamshala Distt. Kangra. The copy of order dated 15.03.2007 is annexed herewith as annexure R-2. In view of these orders; the present application deserves to be dismissed.

5. That the applicant is estopped by his act and conducts and acquiescence to raise the instant dispute as the matter is already pending before the concerned appropriate authority for decision.
6. That the present application is premature as the matter raised by the applicant is still pending before the concerned authority.
7. That as per the decision of Hon'ble HP High Court in CWP No. 1927/2007, the required honorarium and increment is given to the employees. The copy of the order dated 06.06.2008 of the High Court is annexed as annexure R-3.

#### ON MERITS

1. That the contents of Para No.1 of the demand charter are not applicable to the respondent as District Red Cross Society, Dharamshala is an organization wholly engaged in charitable, social and philanthropic services of the public and just to help the poor and suffering persons and provide them immediate help/relief. The society is not meant to earn any profits and the same is not a Govt. department as such the alleged rates of the wages are not applicable to the employees of the society.

In fact the employees are being paid monthly consolidate honorarium from the society. In addition to this, all workmen working in the society are getting as one month honorarium as incentive from the society during the year.

The society is being run out of benevolence of the donors in general and out of Consolidated funds available with the society.

The workers were apprised about the mission and aims of the society. Those who offered their services for the society were called to work. The matter has already been decided by the court and the respondent No. II and III submitted the proposed terms and conditions of the services of the employees of the society and the same is pending for decision before the concerned authority. Those terms and conditions will be implemented as and when approved by the Govt./concerned authority.

It is submitted that respondent have given the undertaking to the Hon'ble High Court to frame rules regarding terms and conditions of the services of the employees and accordingly action has been taken. Even the respondent No.II has given the assurance before the Hon'ble High Court that the condition of the employment of the employees will be improved and accordingly the honorarium of the employees has been revised and also given increments according to the undertaking given before the Court. All workmen working in the society are getting one month honorarium as incentive during the year. The proposed service rules of the employees have been submitted for necessary consideration to the concerned authority and the same are still awaited. However the society have framed the service rules, terms and conditions of the employees as approved in

the managing committee of the Distt. Red Cross Society is annexed herewith as annexure R-4.

2. That the contents of the Para No.2 of the demand charter are wrong, incorrect and the same are denied. However, the proposed rules for the terms and conditions of the service of the employees are pending for approval before the Govt./concerned authority.
3. That the contents of the Para No.3 of the demand charter are wrong, incorrect and false and the same are totally denied. No pay scale of employees ever granted by the chairman of Managing Committee of Indian Red Cross Society branch Shimla to Distt. Red Cross Society, Dharamshala. However, the District Red Cross Society Dharamshala has given the revised honorarium to the employees as per undertaking given by the respondent No. II in the Hon'ble High Court. Further there is no uniform pattern of service/pay in all the societies.
- 3(1) That the contents of the Para 3(1) of the demand charter does not relate to the replying respondents.
4. That the detailed reply is already given in Para No.1 mention above.
5. In reply to Para No.5, it is submitted that the proposed rules, terms and conditions of the employees have been submitted for necessary consideration to the concerned authority and the same are still awaited. However the society has framed the service rules of its employees. At present the employees are not equated with the regular Govt. employees as no grant is being given to the society by the Govt.
6. That the contents of Para No.6 of the demand charter are not admitted. The matter of service condition of the employees of the respondent is still pending before the concerned authority.
7. That the contents of Para No.7 of the demand charter are under consideration before the competent authority. However the society has framed the service rules for its employees employed by the society.
8. That the contents of the Para No.8 of the demand charter are denied as not being applicable. It is brought to the kind information before the Hon'ble Presiding Judge H.P. Industrial-cum-Labour Court Dharamshala Distt. Kangra that the Clinical Lab at Red Cross Building at Dharamshala is running on loss every year due to shifting of DR. R.P.G.M.C. from Dharamshala to Tanda. The society is getting an approximate loss of Rs.2.50 lac every year. An audited income and expenditure statement account of the Red Cross Clinic Lab for the year 2008-09 is attached as annexure R-5. As such some of the lab staff have been adjusted with Govt. Hospitals to recover the loss of the Clinic lab by receiving fund of Rs.2000/- per month per employees from the Rogi Kalyan Samiti, Zonal Hospital Dharamshala and RKS of CHC, Nagrota Bagwan for their service rendered in the Govt. Hospitals. Distt. Red Cross has maintained the Red Cross Clinic Lab at Distt. Ayurvedic Hospital at Dharamshala with the remaining limited staff. Even though, the Red cross Clinic Lab at Distt. Ayurvedic Hospital Dharamshala is also failed due to its loss of Rs.1,25,951/- w.e.f. August 2009 to February 2011. The detail income and loss of the Red Cross Clinical Lab for the period from August

2009 to Feb. 2011 is attached as annexure R-6. The society can not suffer any loss in any way. Distt. Red Cross society is an organization wholly engaged in charitable, social and philanthropic services of the poor and suffering persons and provided them immediate help and relief. As such order was given by the Deputy Commissioner Kangra to close the lab at Distt. Ayurvedic Hospital at Dharamshala and employees of the Red Cross Clinical lab were shifted to Zonal Hospital Dharamshala in the interest of public and the society. The applicants have also agreed before the Deputy Commissioner cum-Chairman Distt. Red Cross Society to work in the lab of Zonal Hospital Dharamshala. In these circumstances Deputy Commissioner-cum-Chairman of Distt. Red Cross Society Dharamshala ordered to close the lab being run in heavy loss and employees of Red Cross Clinical Lab were adjusted in the lab of Zonal Hospital Dharamshala and now they are working in the Lab of Rogi Kalyan Sammiti, Zonal Hospital Dharamshala. There is no change in the terms and conditions of the employees. The monthly honorarium will be paid by the Society as decided. The adjustment of the employees of the Red Cross Clinical Lab is in their interest and benefits in the lab of Zonal Hospital Dharamshala. It is further stated that respondent No.3 (Secretary) has never pressurized the President of union to withdrawal the case. Hence it is wrong, incorrect and the same is denied.

9. That the contents of Para No.9 of the demand charter is not applicable”.

In these circumstances, the contesting respondents No. 2 and 3 pray that the demand charter being premature and the claim petition, which has been instituted with a malafide intention to harass them, be dismissed with costs.

6. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

7. Per order dated 18.6.2011, following issues were struck by my Id. Predecessor:

1. Whether the demands raised by the H.P. Red Cross Karamchari Sangh vide demand notice dated 6-8-2009 are legal and maintainable as alleged. If so, to what relief the Red Cross Karamchari Sangh are entitled to? ..OPP.
2. Whether the reference is not maintainable. The Red Cross-Society be a Charitable Institution as alleged. If so, to what effect? ..OPR.
3. Relief.

8. I have heard the Id. counsel/AR for the parties and have gone through the case file.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Redundant

Issue No. 2 : Yes as the same is hit by Order II, Rule 2 CPC.

Relief : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 2

10. Shri Kashmir Singh, the President of the petitioner Sangh, stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that RPTMC College was initially started at Dharamshala. At that time, the lab used to work round the clock due to the excess work. He also admitted that after the shifting of the medical college to Tanda, the work in the laboratory was reduced substantially. He admitted that no specific budget is allotted to the Red Cross Society by the Government and the laboratory is run by the society out of its funds. He feigned ignorance about the fact that the respondent society has already forwarded the Rules governing the service conditions of its employees to the State headquarter and no approval has been received from the headquarter upto date.

11. Conversely, Shri O.P. Sharma, Secretary, Kangra Red Cross Society, Dharamshala (respondent No.3) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the laboratory suffered the loss due to the mismanagement. He also denied that the petitioner Sangh is entitled to the relief(s) claimed.

12. A number of documents have been placed on the record by the parties in support of their respective claims. At this stage, I will discuss/mention only those documents which are relevant for the disposal of the issue in hand.

13. Ex. RW1/B is the copy of an order dated 22.10.2005 passed by this Court in Application No.106/2005 titled as Kashmir Singh Rana and five others versus The Kangra District Red Cross Society, Dharamshala. It depicts that the ld. counsel for the respondent had sought the time for framing and finalizing the rules governing the service conditions of the employees of the Red Cross Society. Pursuant to the assurance and undertaking given by the ld. counsel for the respondent, the applicants/petitioners withdrew the application/petition.

14. Ex. RW1/C is the copy of the order/Award dated 15.3.2007 passed by this Court in Application No.16/06 titled as Shri Kashmir Singh Rana and five others versus Shri Bharat Khera, Deputy Commissioner-cum-Chairman, the Kangra District Red Cross Society, Dharamshala and another. A glance of the order/Award discloses that the applicants/petitioners had instituted an application under Section 29 of the Act for penalizing the respondents for breach of the settlement or Award dated 22.10.2005 (Ex. RW1/B). In the application, the applicants/petitioners had pleaded that neither the relevant service rules have been framed nor equal pay for equal work is being given. For these reasons, the respondents be penalized. The application was dismissed by one of my ld. Predecessors vide order/Award dated 15.3.2007.

15. Ex. RW1/D is the copy of an order dated 06.6.2008 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.1927/2007 titled as Shri Kashmir Singh Rana and five others versus the Deputy Commissioner-cum-Chairman, the Kangra District Red Cross Society, Dharamshala and another. A glance of the order unfolds that the respondents undertook to revise/enhance the salary of the petitioners and other employees as well as pay them the increments. The writ petition was accordingly disposed of.

16. Ex. PW1/B is the copy of the demand notice dated August 6, 2009 served upon the respondents by the President of the petitioner Sangh under Section 2-A of the Act.

17. Ex. PW1/C is the copy of the reply dated 07.9.2009 given by the Secretary of the Society to the demand notice.

18. Ex. PW1/D is the list of the employees of the Red Cross Society showing their emoluments and the payment of the yearly bonus to them.

19. At the very outset, I will like to mention that the copy of the proceedings of the meeting dated 02.8.2009 convened by the Karamchari Sangh have not been placed on the record to show that the Sangh had decided or authorized its President Shri Kashmir Singh (PW1) to serve the demand notice dated August 6, 2009 (Ex. PW1/B) upon the respondents. Since a material document has been withheld, an adverse inference under Section 114 (g) of the Indian Evidence Act has to be drawn against the claimant/petitioner.

20. It is well known that while dealing with the industrial disputes under the Act, the broad principles relating to the civil suits as contained in the Code of Civil Procedure, 1908 ('the CPC' for short) are followed.

21. Order II Rules 1&2 of the CPC postulates as under:—

- “1. Frame of suit.—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.
2. Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
- (2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
- (3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

*Explanation.*—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action”.

22. As mentioned earlier, the petitioner(s) has/have already litigated thrice. This is the fourth bout of litigation on behalf of the petitioner(s). Most of the demands raised by the petitioner(s) in the present industrial dispute were raised by him/them earlier also. Such demands are/were like the grant of equal pay for equal work as well as the framing and implementation of R&P Rules. The demands, which the petitioner(s) omitted to raise earlier without the leave of the Court, cannot be raised now.

23. The matter regarding the implementation of R&P Rules relating to the respondents/society is pending before the Indian Red Cross Society, Himachal Pradesh State Branch, Shimla for consideration as is evident from Ex. PW1/C. Since majority of the demands raised by the petitioner have already been decided by various Courts of law, the petitioner is debarred from raising the fresh demands or starting fresh litigation as per the provisions contained in Order II, Rule 2 of the CPC.

24. It appears to me that the petitioner Sangh and its employees are approaching the Court(s) time and again with some ulterior motive and to harass their adversaries. After the dismissal of Application No.16/2006 per order/Award dated 15.3.2007 (Ex. RW1/C) by this Court,

the petitioner(s) instituted CWP No. 1927/2007 before the Hon'ble High Court of Himachal Pradesh. The said CWP was disposed of vide order dated June 6, 2008 the copy of which is Ex. RW1/D. Thereafter, the demand notice dated August 6, 2009 (Ex.PW1/B) was served upon the respondents by the petitioner. If all the demands raised by the petitioner were not met by the respondents or they were being discriminated then why they did not agitate the said fact at the time of the disposal of CWP No.1927/2007 by the Hon'ble High Court of Himachal Pradesh? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth.

25. At the cost of reiteration, I will like to add that this is fourth round of litigation on behalf of the petitioner. The claim petition is hit by Order II, Rule 2 CPC.

26. Coming to the objection raised by the respondents to the effect that this Court has no jurisdiction to hear and decide the matter as the Red Cross Society is a charitable institution, I will like to say that in Indian Red Cross Society, Haryana State Branch, Indian Red Cross Society v. Additional Labour Court, Chandigarh, (1992) 1 LLN 211 (P&H) (DB), it has been held that the Red Cross Society is an industry. In view of the authoritative pronouncement, this Court has the jurisdiction to deal with the matter.

27. This issue is decided against the petitioner and in favour of the respondents.

#### **Issue No. 1**

28. Taking into account my findings on issue No. 2, this issue has become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like 'flogging a dead horse'. Moreover, the Hon'ble Apex Court has held that if the Court finds the suit/case to be not maintainable, it need not give findings on rest of the issues.

29. This issue has been answered accordingly.

#### **Relief (Issue No. 3)**

30. As a sequel to my findings on issue No. 2 above, the present claim petition being not maintainable fails. It is, therefore, dismissed. For dragging the respondents to the Court time and again, the petitioner/Sangh is saddled with Rs.10,000/- as costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of April, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 213/2012  
Date of Institution : 17.4.2012  
Date of Decision : 22.04.2013

Shri Raj Kumar s/o Shri Chatro Ram, r/o Village Cheema, P.O. Udaipur, Tehsil and Distt. Chamba, H.P. . . . *Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Chamba, Distt. Chamba, H.P. . . . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
: Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the services of Sh. Raj Kumar S/O Sh. Chatro Ram, Vill. Cheema P.O. Udaipur Tehsil and Distt. Chamba, H.P. from time to time during the years 1997 to 2006 and finally terminating him during year, 2006 by the Executive Engineer, I&PH Division, Chamba Distt. Chamba, H.P. without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of December, 1994 and is still working as such.
2. That the petitioner worked continuously in the year 1995 & 1996 and completed more than 240 days in these 2 years, but during the year 1997 the department has started to give artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted to and be kept on tenterhooks and be exploited by the respondent department.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularization of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.

4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the year 1997 to April 2006 whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.
5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month July 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.

9. That the applicant has spotless services with the respondent and has never been charge sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India.
10. That the petitioner is continuously working on muster roll since December, 1994 to date and my services no where terminated by the respondent during the year 2006.

Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:-

**Relief Sought:-**

- (a) The period of breaks given by the respondent from time to time between the year 1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 1997 to 2006.
- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 9 of the reply read thus:—

- “1. That the contents of this para are not disputed.
2. That the contents of para 2 of the claim petitioner are wrong hence denied A matter of fact the respondent office have provided the continuous work of more than 240 days to

- the petitioner in years 1998 and 2006. For the rest of year i.e. 1998 to 2005, the respondent office due to non-availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with inn the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A. 171
3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.
  4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is bessed where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.
  - 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the stage Government as and when he full fills all the eligibility of criteria.
  7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
  8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.

9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? . .OPP.
  2. Whether the final termination of the services of the petitioner by the respondent in the year 2006 is wrong and illegal as alleged? . .OPP.
  3. Whether the petition is not maintainable in the present form? . .OPR.
  4. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR.
  5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : Not pressed  
 Issue No.4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. The petitioner Shri Raj Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 uptil date.

15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division Udaipur, Division Chamba.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of December, 1994 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.12.1994.

18. The version of the petitioner is that from June, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of June, 197 to April, 2006 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

21. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No.2**

23. Not pressed (as per the statement dated 10.4.2013, the services of the petitioner were never terminated finally).

## **Issues No. 3 and 4**

24. Not pressed.

## **Relief (Issue No.5)**

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to April, 2006 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of June, 1997 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2013.

RAJAN GUPTA  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 107/2012

Date of Institution : 06.1.2012

Date of Decision : 29.04.2013

Smt. Ramkali w/o Shri Khem Singh, r/o Village & P.O. Majharnoo, Tehsil Joginder Nagar,  
Distt. Mandi, H.P. . .Petitioner.

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Smt. Ramkali W/O Sh. Khem Singh, Village & P.O. Majharnoo, Tehsil Joginder Nagar, Distt. Mandi, by the Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years 1998 to 2000 without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on muster roll basis by the respondent on 01.4.1998. No appointment letter/order was issued in her name by the respondent. Instead of engaging the services for the full month, the respondent used to provide her (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.1999. She worked for 111 days in the year 1998 and 190 days in the year 1999. From the year 2000 onwards, she completed more than 240 days of work in each and every calendar year of her engagement till the date of the regularization of her services. Artificial/fictional breaks were given by the respondent so that she does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of ‘last come first go’. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to her (petitioner) have been regularized earlier to her against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to her (petitioner) by the respondent deliberately which amounts to unfair labour practice. She has continuously worked w.e.f. 01.4.1998. She completed eight years of service on 31.12.2005 and 10 years of continuous service on 31.12.2007. As per the observations made by the Hon’ble Apex Court in Mool Raj Upadhaya’s case, she is entitled to the regularization of her services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Now she is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act. As such, as is

apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.04.1998 to 31.12.1999 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 01.4.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. She used to work intermittently as per her convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when she reported for work, her services were engaged. The services of the petitioner have been regularized w.e.f. 09.3.2010. She (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by her namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1999 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya’s case. The regularization policy dated 09.9.2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of her services is 31.3.2008 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. Her services have been regularized as per the policy of the

State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: No
Issue No.2	: Yes
Issue No.3	: Not pressed
Issue No.4	: Not pressed.
Relief.	: Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No.1**

8. Smt. Ramkali (petitioner) stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that the work for 240 days or more was provided to her by the respondent during the period of the alleged breaks. She also denied that she used to remain absent because of which she could not complete 240 days of work. Further, she denied that no fictional breaks were given to her by the respondent and she has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending

upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-28 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 01.4.1998. Admittedly, the petitioner is still serving the respondent/department and her services have already been regularized.

16. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.*— For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his/her fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.4.1998. From the date of her appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, she worked for less than 240 days in a calendar year and remained absent from her duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that she (petitioner) has not reported for duty, then why she did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by her and for which she was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about her rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of her claim. The act and conduct of the petitioner is nocuous to her cause. Simply because no show cause notice was issued to the petitioner by the respondent for her willful absence from duty from time to time or no disciplinary proceedings were initiated against her by the respondent/employer, the same will not come to her (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. She is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of her opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

## **Issues No. 3 and 4**

24. Not pressed.

## **Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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## **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 106/2012  
Date of Institution : 06.1.2012  
Date of Decision : 29.04.2013

Shri Sandesh Verma s/o Shri Kali Dass, r/o Village Arthi, P.O. & Tehsil Joginder Nagar,  
Distt. Mandi, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Sandesh Verma S/O Sh. Kali Dass, Village Arthi, P.O. & Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 01.4.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 196 ½ days in the year 1999 and 221 days in the year 2000. From the year 2000 onwards he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of ‘last come first go’. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 01.4.1998. He completed eight years of service on 31.12.2005 and 10 years of continuous service on 31.12.2007. As per the observations made by the Hon’ble Apex Court in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.04.1998 to 31.12.2000 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of

rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.

(iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.

(iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 01.4.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 07.10.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? . . .OPP.

2. Whether the petition is not maintainable in the present form? . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Not pressed
Issue No. 4	: Not pressed.
Relief.	: Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. Shri Sandesh Verma (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-30 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 16.4.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,—

(17) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(18) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.*— For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.—

(a) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(b) he has been on leave with full wages, earned in the previous years;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

- (d) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 16.4.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

## **Issues No. 3 and 4**

24. Not pressed.

**Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 214/2012

Date of Institution : 17.4.2012

Date of Decision : 22.04.2013

Shri Shamsheer Singh s/o Late Shri Janam Singh Rana, r/o Village and P.O. Udaipur, Tehsil and Distt. Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Chamba, H.P. . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR

: Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the services of Sh. Shamsheer Singh S/O late Sh. Janam Singh Rana, Vill. and P.O. Udaipur Tehsil and Distt. Chamba, H.P. from time to time during the years 1997 to 2006 by the Executive Engineer, I&PH Division, Chamba Distt. Chamba, H.P. without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of May, 1995 and is still working as such.
2. That the petitioner worked continuously upto the year 1996 completed more than 240 days, but during the month of June 1997 the department has started to give artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted to and be kept on tenterhooks and be exploited by the respondent department.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularization of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.
4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the year 1997 to April 2006. Whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.
5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month June 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for

- which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the years 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.
  9. That the applicant has spotless services with the respondent and has never been charge sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India.

Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:—

**Relief Sought:—**

- (a) The period of breaks given by the respondent from time to time between the year 1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 1997 to 2006.
- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.

- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 9 of the reply read thus:—

- "1. That the contents of this para are not disputed.
2. That the contents of para 2 of the claim petitioner are wrong hence denied. A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with in the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.
3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.
4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is besed where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.
- 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to

the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.

7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.
9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? . . .OPP.
  2. Whether the petition is not maintainable in the present form? . . .OPR.
  3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
  4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No.1**

8. The petitioner Shri Shamsher Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R. C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 upto date.

15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division, Udaipur, Division Chamba.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of May, 1995 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.5.1995.

18. The version of the petitioner is that from June, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of June, 1997 to April, 2006 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

21. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is decided in favour of the petitioner and against the respondent.

### **Issues No. 2 and 3**

23. Not pressed.

### **Relief (Issue No. 4)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to April, 2006 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of June, 1997 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2013.

RAJAN GUPTA  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 103/2012

Date of Institution : 06.1.2012

Date of Decision : 29.04.2013

Shri Sunka Ram s/o Shri Roshan Lal, r/o VPO Tikroo, Tehsil Joginder Nagar, Distt. Mandi, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Sunka Ram S/O Sh. Roshan Lal, VPO Tikroo, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wagger on muster roll basis by the respondent on 03.9.1998. No appointment letter/order was issued in his name by the respondent. Instead of engaging the services for the full month, the respondent used to provide him (petitioner) the work for 15 to 20 days every month. Fictional breaks were given by the respondent up-to 31.12.2000. He worked for 89 days in the year 1999 and 217 days in the year 2000. From the year 2000 onwards, he completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. Artificial/fictional breaks were given by the respondent so that he does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act,

1947 (14 of 1947, 'the Act' for short) for the purpose of regularization as per the policy of the State Government. After giving the fictional breaks, new/fresh hands were engaged by the respondent. The names of the newly appointed persons are S/Sh. Om Prakash Soni and Anoop Kumar. They were not provided the fictional breaks by the respondent. At the time of giving the breaks, the respondent failed to adhere to the principle of 'last come first go'. Work and funds were available with the respondent. The break period is to be counted as continuous service for the purpose of regularization. The persons junior to him (petitioner) have been regularized earlier to him against the policy of the Government. Per letter dated 27.3.2006, Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to engage the services of the daily wagers without any break. Fictional breaks were given to him (petitioner) by the respondent deliberately which amounts to unfair labour practice. He has continuously worked w.e.f. 03.9.1998. He completed eight years of service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the observations made by the Hon'ble Apex Court in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Now he is working with the respondent/department on work charge/regular basis. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 01.11.1998 to 31.12.2000 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been arrayed as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is also hit by the vice of delay and laches on the part of the petitioner. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis on 03.9.1998. However, it has been denied that the fictional breaks were given to the petitioner at any point of time. Continuous work for whole of the month was provided to the petitioner. He used to work intermittently as per his convenience. Despite of the paucity of the funds, continuous work for more than 240 days was made available. The petitioner used to remain absent from duty. As and when he reported for work, his services were engaged. The services of the petitioner have been regularized w.e.f. 07.10.2010. He (petitioner) is debarred from claiming parity with the workmen whose names have been divulged by him namely S/Sh. Om Prakash Soni and Anoop Kumar. Both these workmen were engaged in the year 2002, whereas, the petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash

Soni and Anoop Kumar were regularized after the regularization of the services of the petitioner. Sh. Om Prakash stands superannuated. The directive issued by the department per letter dated 27.3.2006 is not applicable since the petitioner used to willfully remain absent from duty. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per that policy, one time benefit was given to the employees who had either 208 completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 08.9.2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years of continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been regularized as per the policy of the State. He (respondent) neither indulged in any unfair labour practice nor flouted any provision of the Act. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1	: No
Issue No.2	: Yes
Issue No.3	: Not pressed
Issue No.4	: Not pressed.
Relief.	: Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### Issue No.1

8. Shri Sunka Ram (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement

of claim in its entirety. In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Exts. RW1/E and F are the copies of the letters dealing with the regularization of the daily paid/contingent paid workers who have completed eight years or more of service.

14. Exts. P-1 to P-19 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially employed on 01.9.1998. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,—

(19) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(20) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my mind, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.9.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2000. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000.

The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of his opponent.

## **Issue No. 2**

22. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

23. This issue is also decided against the petitioner.

## **Issues No. 3 and 4**

24. Not pressed.

## **Relief (Issue No. 5)**

25. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2013.

RAJAN GUPTA  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 212/2012

Date of Institution : 17.4.2012

Date of Decision : 04.04.2013

Shri Tilak Raj s/o Shri Chatro Ram, r/o VPO Udaipur, Tehsil and District Chamba, H.P.

*. .Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Chamba, Distt. Chamba, H.P. . . .Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR

: Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the service of Sh. Tilak Raj S/O Sh. Chatro Ram, V.P.O. Udaipur, Tehsil and Distt. Chamba, H.P. from time to time during the years 1997 to 2006 by the Executive Engineer, I&PH Division, Chamba Distt. Chamba, H.P. without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month of January, 1996 and is still working as such.
2. That the petitioner worked continuously in the year 1996 & 1997 and completed more than 240 days in these 2 years, but during the month of July 1997 the department has started to give artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not be permitted to and be kept on tenterhooks and be exploited by the respondent department.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularization of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.
4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the year 1997 to April 2006 whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have

been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.

5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.
6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month July 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.
9. That the applicant has spotless services with the respondent and has never been charge sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural

justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India. Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:—

**Relief sought:-**

- (a) The period of breaks given by the respondent from time to time between the year 1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 1997 to 2006.
- (b) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (c) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, paras 1 to 9 of the reply read thus:—

- “1. That the contents of this para are not disputed.
2. That the contents of para 2 of the claim petitioner are wrong hence denied A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to non-availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with inn the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting

for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.

3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.
4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is besse where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.
- 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.
7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.
9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2006 is illegal and unjustified as alleged? . . .OPP.
  2. Whether the petition is not maintainable in the present form? . . .OPR.
  3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
  4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. The petitioner Shri Tilak Raj stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive

Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 uptil date.

15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division Udaipur, Division Chamba.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of January, 1996 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 01.1.1996.

18. The version of the petitioner is that from July, 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to April, 2006 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

21. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is decided in favour of the petitioner and against the respondent.

**Issues No. 2 and 3**

23. Not pressed.

**Relief (Issue No. 4)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to April, 2006 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2013.

RAJAN GUPTA  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 318/2012

Date of Institution : 28.8.2012

Date of Decision : 04.04.2013

Shri Vijay Kumar s/o Shri Chattar Singh, VPO Chaklu, Tehsil & Distt. Chamba, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, IPH, Division, Chamba, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
: Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vijay Kumar S/O Sh. Chattar Singh, VPO Chaklu, Tehsil & Distt. Chamba, H.P. by The Executive Engineer, IPH Division Chamba, H.P. from time to time during 1997 to 2005, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “1. That the petitioner was initially engaged on Muster Roll basis by the respondent as daily waged beldar in the month on 18.09.1995 and is still working as such.
2. That the petitioner worked continuously in the year 1995 & 1996 and completed more than 240 days in a year, but during the year 1997 the department has started to give artificial/fictional breaks by allowing work for 18 days in a month to prevent applicant from completing 240 days in a year. The practice adopted by the respondent to allow 18/20 days work in a month amounts to unfair labour practice. The petitioner who always ready and willing to work for full month, could not permitted to work for full month and always kept on tenterhooks and be exploited by the respondent department.
3. That the cessation of work for the period of intermittent break for 12/13 days in each month from the year 1997 to April 2006 is due to the fault of the respondent for which petitioner is no where defaulter and as such, the said period of intermittent break have to be counted for the calculation of 240 days continuous service in each year for the purpose of regularisation of daily waged service into work charged cadre but respondent has not taken the said period of intermittent breaks for the calculation of 240 days as such, the action of the respondent is clear cut violation of Section 25B of ID Act 1947.
4. That the services of the petitioner has been interrupted by allowing the work for 18 days and artificial/intermittent breaks given and not permitted to work for rest of days in a month by the department for the period from the year 1997 to April 2006 whereas, the junior workmen engaged on muster roll much after the petitioner in the year 1997, 1998, 1999 & 2000 so on have been continuously kept on muster roll for full months regularly it means the sufficient funds and work were available with the respondent department but the services of the petitioner have been intentionally interrupted in each month so that petitioner could not complete the criteria of 240 days in each calendar year for the purpose of regularization in work charged cadre. The list of such junior workmen is attached herewith as Annexure-P1. The said action of the respondent is clear cut violation of Section 25 G of ID Act 1947 and also amounts to unfair labour practice on his part.
5. That the junior workmen whose names mentioned in the Annexure-P1 have been continuously provided work for full month on muster roll by ignoring the petitioner and their daily waged services have also been regularized by the respondent department under various 8 years regularization policies of the State Govt. of HP.

6. That if the services of the applicant would have not been interrupted by giving the fictional breaks/artificial breaks intentionally by the respondent department and petitioner also would have been permitted to work for full month instead of 18 days in months from the month July 1997 to April 2006, the service of applicant would be regular at par with junior workers as named in Annexure-P1. The services of the Junior workmen has been regularized on the cost of the petitioner the said action of the respondent is illegal, un-justified, un-constitutional, arbitrary and also against the principle of natural justice.
7. That the petitioner has never remained close from work at my own since my date of joining in the department to the date. During this period, petitioner only remain closed from work as and when respondent has not provided any work on muster roll to me for which I am no where defaulter. The respondent has given intermittent breaks to the petitioner in service from time to time intentionally just to favour the junior workmen favorite to the respondent so that petitioner could not complete the criteria of 240 days in each calendar year and deprived of from the benefit of regularisation. As and when the intermittent breaks were given by the department between the year 1997 to 2006 the services of the junior workmen kept retained on muster roll.
8. That the applicant has made various requests with respondents time and again to allow/permit work for full month instead of allowing work only for 18 days on Muster Roll in a month but nothing has been done by the respondent and all in vain. At last, the matter has been brought to the notice of the Govt. by the Trade Union during the year 2006 and the Under Secretary (IPH) to the Govt. of Himachal Pradesh has issued a letter bearing No-IPH(A)2(B)1-2-2003-Part Dated Shimla the 27th March, 2006 to all the field offices in which directions have been passed to permit work for full month (photo copy of the said order is attached herewith duly marked as Annexure-P2). In Annexure-P2, the Govt. has clearly mentioned to the respondent that the court has not recognized these fictional breaks and have held such person to be in continuous employment on daily waged basis but even then the respondent has not taken into count the period of fictional breaks for the calculation of 240 days for the purpose of continuous service.
9. That the applicant has spotless services with the respondent and has never been charge-sheeted for any act of indiscipline or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural justice. The said action of the respondent is also violating the Article 14 and 16 of the constitution of India.
10. That the petitioner is continuously working on muster roll since December, 1994 to date and my services no where terminated by the respondent during the year 2006. Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-B & G of ID Act-1947. The action of the respondent is also melafied arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:-

**RELIEF SOUGHT**

- (jj) The period of breaks given by the respondent from time to time between the years 1997 to April 2006 be declared illegal and un-justified and respondent be directed to count the breaks period as continuous service for the purpose of calculation of 240 days in each calendar year from 1997 to April, 2006.
- (kk) To direct the respondent to pay the back wages for the period of intermittent breaks given from time to time between the period from June 1997 to April 2006 as the respondent has kept the petitioner out of work intentionally for which the petitioner is no where defaulter.
- (ll) To direct the respondent to regularize the daily waged services of the petitioner in work charged cadre from such date from which immediate junior workmen have been regularized under 8 years regularisation scheme alongwith all consequential benefits and payment of arrear of difference of salary/wages etc.
- (mm) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (nn) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, paras 1 to 10 of the reply read thus:—

- "1. That the contents of this para are not disputed.
- 2. That the contents of para 2 of the claim petitioner are wrong hence denied. A matter of fact the respondent office have provided the continuous work of more than 240 days to the petitioner in years 1997 and 2006. For the rest of year i.e. 1997 to 2005, the respondent office due to non availability of funds and work was not in a position to provide the work for whole of the month and accordingly, M/Rolls were issued for 15/18/19 and 20 days, The position for which the petitioner was duly made aware of, Further M/Roll were issued as per availability work and the verbal request of the petitioner and other similarly situated workmen in the Muster Roll from time to time. Thus at the time of the employment it was well with inn the knowledge of petitioners and others their engagement is for the particulars period i.e. 15/16/19/20 days and the respondent office is not a position to provide work for whole of the month. The concerned workman after consenting for the same had reported for duty by marking with presence in the M/Rolls. The detailed is mandays chart of the Petitioner is being attached herewith Annexure-A.
- 3. That the contents of Para 3 of the claim petition are wrong hence denied. It is however submitted that at no stage of his employment the petitioner was ever given the fictional brakes by the respondent office. The issuance of the M/Roll for the days of 15/16/18/19 and 20 was due to the non availability of funds and work. The detailed reply has already been given in Para-2-above.

4. That the contents of Para-4 of the claim petition are wrong hence denied. As has been discussed above the issuance of the M/Roll for the year 1997 to 2005 for the days of 15/18/19 and 20 is due to non availability of funds. The position which was duly consented by the petitioner and other similarly situated workmen at the relevant time. It is further submitted that the Annexure P-1 pertains with the workmen engagement by the Respondent office. However the said workmen were deployed on the scheme/works which were of permanent nature and regular labour was required for the running and maintenance of the same. On the contrary the petitioner and other similarly situated workman were deployment on account of special budgetary provision for the augmentation and enunciation of new schemes. Moreover under the Rules the deployment of the labour beyond the radius of 8 KM. is besed where as territorial of the jurisdiction of the Respondent office in much beyond the 8 KM. Thus in accordance to above the preference is given to the local labour for the schemes running or initiated in a particulars area.
- 5 and 6 That the contents of para 5 and 6 of the claim petition are wrong hence denied. As has been discussed above at no stage of services the fictional breaks were ever given to the petitioner by the Respondent office. A detailed reply has already been given in paras supra. It is further submitted no objection but so ever was ever raised by the petitioner at the relevant time for his engagement, for the work which were not of permanent nature. The present dispute has been raised by the petitioner at a belated stage. It is wrong to alleged that the petitioners had been discriminated upon by the Respondent office. The regularization of the daily wagers is done as per the prevailing policy for the state Government. The case of petitioner shall also be considered for his regularization as per the policy of the state Government as and when he full fills all the eligibility of criteria.
7. The contents of para 7 of the claim petition are wrong hence denied. The detail reply has already given in para supra.
8. The contents of para 8 of the claim petition are also wrong and hence denied. How ever the letter/instructions dated 27.3.2006 has been issued in a different context and is not applicable to the case of the petitioner.
9. That the contents of para 9 of the claim petition are also wrong and hence denied. The non issuance of the M/Roll for whole the month is due to the non availability of funds and work. These were no malafide attention on the part of respondent office on this account or account of disciplinary action against the petitioner, as is being contemplated by the petitioner in this para of the claim petition.
10. That the contents of para 10, the claim petitioner are wrong, hence denied. The petitioner working on Muster Roll since September 1995 as per annexure (A). ATTACHED In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.
4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.10.2012, following issues were struck:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2005 is illegal and unjustified as alleged? OPP
  2. Whether the petition is not maintainable in the present form? OPR

3. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : Not pressed  
 Relief. : Claim petition allowed in part  
 vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No.1

8. The petitioner Shri Vijay Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that even now he is serving the respondent as a daily wager. He denied that because of the non availability of the budget, work for the entire month could not be provided to him during different years. He also denied that at the time of the issuance of the muster rolls, he and his companions were informed that the respondent/department cannot provide them the work for more than 17 to 20 days. Further, he denied that he has not fulfilled the criteria for the regularization of his services and has instituted a phoney petition.

9. Conversely, Shri R.C. Kapoor, Executive Engineer, I&PH Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that initially the muster roll for the entire month used to be issued in the name of the petitioner. Subsequently, the muster roll for less days was issued. He denied that the breaks were given to the petitioner intentionally. He feigned ignorance about the fact that S/Shri Prahlad, Rattan Chand and Kishori Lal are junior to the petitioner. He admitted that all these persons have been regularized. Self stated, the muster rolls for the entire month pertaining to the work of permanent nature used to be issued in favour of Shri Prahlad etc. and they fulfilled the criteria for the regularization of their services. He denied that the instructions issued by the Government per letter dated 27.3.2006 (Ex. RW1/C) were ignored by them.

10. Ex. PW1/B is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, all the Executive Engineers were directed that the labourers should be engaged for the whole month since the Courts have not recognized the fictional breaks and have held the period of fictional/artificial breaks to be continuous employment.

11. Mark-A is the list of the junior beldars in the office of the respondent whose services have been regularized on completion of eight years of service as per the policy of the Government.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the letter dated 27.3.2006. It corresponds to Ex. PW1/B.

14. Ex. RW1/D is the detail of the daily wagers who were employed after 31.12.1993 upto date.

15. Ex. RW1/E is the seniority list of the junior beldars regularized in the office of the respondent.

16. Ex. Px is the copy of the mandays chart in respect of the regular beldars namely Shri Prahlad etc. working in I&PH Sub Division, Udaipur, Division Chamba.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of September, 1995 and he is continuously working as such. The mandays chart Ex. RW1/B unfolds that the petitioner was initially appointed on 18.9.1995.

18. The version of the petitioner is that from the year 1997 to April, 2006 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the muster rolls for lesser days were issued in the name of the petitioner due to the non availability of the budget.

19. From Ex. RW1/E i.e. the seniority list of the junior beldars regularized by the respondent, it can be gathered that they were provided the work for 240 days or more in a year by the respondent. If no work or funds were available with the respondent then why the persons junior to the petitioner were engaged for more than 240 days by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

20. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2005 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

21. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is decided in favour of the petitioner and against the respondent.

### **ISSUES NO.2 AND 3**

23. Not pressed.

### **RELIEF (ISSUE NO.4)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2005 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be

entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room. Announced in the open Court today this 4th day of April, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 379/2009  
Date of Institution : 18.7.2009  
Date of Decision : 14.05.2013

Shri Amar Singh s/o Shri Kimmat Ram, r/o Village Alugarh & P.O. Tikari, Sub Tehsil  
Sihunta, District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P.

*. Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Amar Singh S/O Sh. Kimmat Ram, by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba (H.P.) w.e.f. 09.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of July, 1995 by the respondent. He

worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of 'last come first go' was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of July, 1995. His mandays chart is annexure RI. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 15.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the

regularization of his services or any other relief as claimed. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part  
vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Amar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. R-2 is the copy of the notice dated 11.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 15.11.2000 (afternoon) due to the non-availability of the work and the funds. 12. Ex. R-3 is the copy of counter foil of the cheque dated 11.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 03.7.1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 15.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.73 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At

the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 03.07.1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 73 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### Issue No. 3

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. While testifying in the Court as PW1, the petitioner has given his age as 50 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

**Issues No. 2, 4 and 5**

28. Not pressed

**RELIEF (Issue No. 6)**

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority service from the date of his illegal termination i.e. 15.11.2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room. Announced in the open Court today this 14th day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 367/2009  
Date of Institution : 18.7.2009  
Date of Decision : 14.05.2013

Shri Ashok Kumar s/o Shri Chatter Singh, R/O Khargat, P.O. Khargat, Tehsil Sihunta,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.& P.H. Division, Dalhousie, District Chamba, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ashok Kumar S/O Sh. Chatter Singh by The Executive Engineer, IPH Division Dalhousie, District Chamba (H.P.) w.e.f. 11/2000 while retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the year 1995 by the respondent. He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of October, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 13.11.2000, the principle of ‘last come first go’ was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly

followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck :

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . .OPP.
  2. Whether the petition is not maintainable in the present form? . . .OPR.
  3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . .OPR.
  4. Whether the petitioner has not come to the Court with clean hands as alleged? . . .OPR.
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR
  6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Issue No.4 : Not pressed  
 Issue No.5 : Not pressed  
 Relief. : Claim petition allowed in part  
 vide operative portion of the Award.

### **REASONS FOR FINDINGS**

#### **ISSUE NO.1**

8. Shri Ashok Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice dated 26.9.2000 (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He denied that the termination notice (Ex. R-3) was also served upon him by his adversary. Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Exts. R-2 and R-3 are the copies of the notices dated 26.9.2000 and 09.10.2000, respectively, served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-3 depicts that the services of the petitioner were disengaged w.e.f. 13.11.2000 (afternoon) due to the nonavailability of the work and the funds.

12. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

13. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

14. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

15. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of October, 1995 by the respondent.

17. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 13.11.2000 (afternoon) after issuing the notice Ex. R-3. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were

disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.427 of the list.

18. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is October, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 414 and 435 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 427 of Ex. RW1/D.

20. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO.3

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can

be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issues No. 2, 4 and 5**

27. Not pressed

#### **Relief (Issue No.6)**

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 13/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room. Announced in the open Court today this 14th day of May, 2013.

**RAJAN GUPTA**

*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 73/2012  
Date of Institution : 06.1.2012  
Date of Decision : 01.5.2013

Shri Ashok Kumar s/o Shri Sagli Ram, r/o Village & P.O. Gondpur Bulla, Tehsil Haroli,  
Distt. Una, H.P. .. *Petitioner.*

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla,  
Tehsil Haroli, Distt. Una, H.P. .. Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Yogesh Kumar (Factory Manager)

**AWARD**

The below given reference has been received from the appropriate Government for adjudication :

“Whether termination of the services of Sh. Ashok Kumar S/O Sh. Sagli Ram, Village & P.O. Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 23.3.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ forshort).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition.

On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent), the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the services of the petitioner nor any person junior to him has been retained in service. No provision of

the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:—

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? . . .OPP.
2. If issue No.1 is proved in affirmative whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? . . .OPP.
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

- |            |   |
|------------|---|
| Issue No.1 | : No  |
| Issue No.2 | : No  |
| Relief.    | : Claim petition dismissed vide operative portion of the Award. |

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Ashok Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings, he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability, he is telling the lies.

10. Since the petitioner has approached the Court for the grant of various relief(s), a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

11. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

12. In Ex. RW1/B i.e. the list of the employees as on 01/8/2012 furnished by the respondent, the name of the petitioner does not figure. The petitioner has not placed on the file any document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

13. This issue is decided against the petitioner and in favour of the respondent.

### **Issue No. 2**

14. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

15. This issue is also decided against the petitioner.

### **Relief (Issue No. 3)**

16. As a sequel to my findings on issues No.1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room. Announced in the open Court today this 1st day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 129/2012  
Date of Institution : 06.1.2012  
Date of Decision : 02.05.2013

Shri Baldev Singh s/o Shri Jai Ram, r/o Village Narholi, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Sharma, Adv.  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Baldev Singh S/O Shri Jai Ram, Village Narholi, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2000 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.2.2001 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.2.2001 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of February, 2001. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck :

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2000 to August, 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . . OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: Yes
Issue No.2	: Not pressed
Issue No.3	: No
Issue No.4	: Not pressed
Relief.	: Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Baldev Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

11. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Shri Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2001 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in February, 2001.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO.2

20. Not pressed.

**Issue No. 3**

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

**Issue No. 4**

23. Not pressed.

**Relief (Issue No. 5)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room. Announced in the open Court today this 2nd day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 145/2012  
Date of Institution : 19.1.2012  
Date of Decision : 03.05.2013

Smt. Bimla Devi w/o Shri Partap Chand, r/o Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
 : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Smt. Bimla Devi W/O Shri Partap Chand, Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during February, 1997 to Year, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting nonavailability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. She worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in her name by the respondent. The latter used to engage her services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. The respondent gave her the artificial breaks from February, 1997 to 30.9.2007. The persons who were working with her (petitioner) or joined the service after her were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to her namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of her (petitioner’s) services. The persons junior to her have been regularized by the respondent earlier to her against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. She (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya’s case, she is entitled to the regularization of her services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. She is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.09.2007 and directed to respondent to pay the wages of the applicant

in breaks periods and counted the said period in continuity of services for the purpose of his regularization.

- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of March, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time she was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. She used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed :

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of February, 1997 to the year, 2003 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 

Issue No. 1	: Yes
Issue No. 2	: Not pressed
Issue No. 3	: No
Issue No. 4	: Not pressed
Relief.	: Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No. 1**

8. Smt. Bimla Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that as and when the muster roll was issued in her name, she was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to her. She denied that she has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to her. He denied that the petitioner never remained absent from her duties. He admitted that as per the record no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an officer order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 18.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of March, 1997 by the respondent. Her date of engagement is 13/03/1997.

17. The mandays chart Ex. RW1/E clarifies that from the date of her initial engagement to December, 2003 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the nonavailability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, she was without any work. While testifying in the Court as PW1, the petitioner has given her age as 52 years. It is well known that a lady like the petitioner will not sit at home during the periods he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

21. Not pressed.

## **Issue No. 3**

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division,

Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issue No. 4**

24. Not pressed.

#### **RELIEF (Issue No. 5)**

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room. Announced in the open Court today this 3rd day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOURCOURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 348/2009  
Date of Institution : 23.5.2009  
Date of Decision : 14.05.2013

Shri Charan Singh s/o Shri Raunki, r/o Village Khar, P.O. Tikri, Tehsil Bhattiyat, District Chamba, H.P. . .Petitioner.

*Versus*

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P.

. .Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Charan Singh S/O Sh. Raunki, by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba (H.P.) w.e.f. 2000 while retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of June, 1995 by the respondent. He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of June, 1995. His mandays chart is annexure RI. Due to the shortage of the funds and the work in the Division, he

(respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 14.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . .OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? . . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part  
vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No. 1**

8. Shri Charan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons, the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. R-2 is the copy of the notice dated 10.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 14.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of cheque dated 10.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 03.6.1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 14.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.64 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 03.06.1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 64 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### Issue No. 3

24. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on*

*the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon’ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. While testifying in the Court as PW1, the petitioner has given his age as 51 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issues No. 2, 4 and 5**

28. Not pressed.

#### **Relief (Issue No. 6)**

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 14.11.2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room. Announced in the open Court today this 14th day of May, 2013.

**RAJAN GUPTA,**  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 83/2012  
Date of Institution : 06.1.2012  
Date of Decision : 16.05.2013

Shri Chintamani s/o Shri Diwas Kumar, r/o Village Gehra, P.O. and Tehsil Sarkaghat,  
District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
. .*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Chintamani S/O Shri Diwas Kumar, R/O Village Gehra, P.O. and Tehsil Sarkaghat, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. January, 2008 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated forest worker by the respondent in the month of April, 2007. No appointment order/letter was issued in his name by the respondent/employer. He worked up-to the month of December, 2007 under Range Officer, Jhungi. In the months of April and May, 2007, he discharged the duties as a fire watcher in Jhungi. From the month of June to August, he worked in the nursery at Gulkhar. In the months of September and October, he worked on Inspection Path, Gulkhar. In November, he served as a watch and ward in RST Depot and, thereafter, in the month of December, 2007, he served in the nursery. He completed 270 days of work during the course of the employment. The payment was made to him by the respondent some times on muster roll basis and at occasions on bill voucher basis. On 1st January, 2008, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. The retrenchment compensation was also not paid to him. At the time of his termination, the persons junior to him were retained in service by the respondent. Not only this, after his retrenchment, new/fresh hands were engaged by the respondent. He was not given an opportunity of re-employment. A demand notice dated 24.9.2009 was served upon the respondent by him, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial

Disputes Act, 1947 (14 of 1947, 'the Act' for short). From the date of his unlawful termination, he is not gainfully employed.

As such, he (petitioner) prays that the termination order dated 01.1.2008 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has not come to the Court with clean hands. He did not complete 240 days of work in any calendar year of his engagement. The petitioner has no cause of action. He is estopped from filing the claim petition by his act and conduct. The petitioner has concealed the material facts from the Court. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged labourer. However, it has been pleaded that the petitioner was employed for carrying out the seasonal works from April, 2007 to 30th August, 2007. In the months of September and October, 2007, the petitioner did not work. He worked on quotation basis in the months of September and October, 2007 which is not countable for the purpose of seniority. In the month of November, 2007, the petitioner again did not work as a mazdoor. In December, 2007, he served for 30 days. The petitioner worked for 180 days in all in the year, 2007 without continuity. His mandays chart is annexure R1. The services of the petitioner were never terminated as alleged. He left the work of his own for the reasons best known to him. Since the petitioner abandoned the job, the question of issuing any notice to him or paying the retrenchment compensation does not arise. No person junior to him has been retained in service or re-engaged. Even no new/fresh hands have been appointed. The petitioner is a permanent resident of Sarkaghat. His residence/home is approximately 120 kilometers away from Jhungi Range where he worked as a labourer up-to the month of December, 2007. The petitioner was having a light motor vehicle and used to drive the same. In addition to it, he owns the agricultural land. The father of the petitioner was working as a Deputy Ranger in Pandar Block Jhungi Range, Suket Division. Shri Dinesh Kumar, the father of the petitioner has also been transferred. Since the petitioner left the job voluntarily, he is not entitled to any protection under the Act. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he did not abandon/leave the service.

5. Per order dated 27.9.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. January, 2008 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petitioner has a cause of action? . . .OPP.
3. Whether the petition is not maintainable in the present form? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Whether the petitioner has not come to the Court with clean hands as alleged? . . .OPR.

6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . .OPR.
7. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
  - Issue No.1 : Yes
  - Issue No.2 : Yes
  - Issue No.3 : Not pressed
  - Issue No.4 : No
  - Issue No.5 : Not pressed
  - Issue No.6 : Not pressed.
  - Relief. : Claim petition allowed in part  
vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No.1**

8. Shri Chintamani (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that after the month of December, 2007, he did not report for duty and left the job. He makes both the ends meet by plying a vehicle and doing the agricultural work.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Sita Devi was appointed on 01.7.2007 and she is still working under him. He also admitted that the services of Shri Amar Singh were engaged in November, 2002 and he is on the rolls of the department. Self stated, both of them were appointed on compassionate grounds. When the petitioner left the job, no notice was sent to him asking him to resume the work. Even no departmental proceedings were initiated against the petitioner. He denied that the services of the petitioner have been disengaged in a wrongful manner.

10. Exts. PW1/B, C, R1 and RW1/B are the mandays charts relating to the petitioner.

11. Ex. RW1/C is the seniority list of daily labourers as it stood on 30.11.2011 of Suket Forest Division, Sunder Nagar.

12. Ex. PA is the copy of mandays chart relating to Shri Mohinder and five other workmen serving under the respondent.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged worker in the month of April, 2007. From the record it can be gathered that the petitioner worked up-to the month of December, 2007 on muster roll and bill voucher basis. RW1

has stated that the period during which one serves on bill basis is not counted for the purpose of the seniority. The petitioner had worked for 61 days on bill basis. He did not complete 240 days of work.

14. The version of the petitioner is that on 1st January, 2008, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has maintained that the petitioner left the service of his own accord and free volition.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. Various mandays charts exhibited on the file depict that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01.1.2008. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. From the deposition made by the respondent (RW1) and the seniority list Ex. RW1/C, it can be gathered that Smt. Sita Devi (serial No.130) was initially appointed by the respondent on 01.7.2007. She is junior to the petitioner and is still serving the respondent/department. This indicates that the respondent failed to adhere to the principle of 'last come first go'. Not only this, one Shri Amar Singh (serial No.131) was appointed by the respondent in the month of November, 2009 i.e. after the disengagement of the services of the petitioner. There is nothing on the record to show that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner by the respondent. That being so, it can be easily said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is thus illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

17. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

18. In view of my findings on issue No.1 above, it is held that the petitioner has a cause of action.

19. This issue is also decided in favour of the petitioner and against the respondent.

## **Issues No. 3**

20. Not pressed.

## **Issue No. 4**

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on*

*the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

23. While testifying in the Court as PW1, the petitioner has given his age as 24 years. During the cross-examination, he admitted that he makes both the ends meet by doing the agricultural work and running a vehicle. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. This issue too is decided in favour of the petitioner and against the respondent.

#### **Issues No. 5 and 6**

25. Not pressed.

#### **Relief (Issue No.7)**

26. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent in the month of January, 2008 is set aside. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his termination i.e. 1st January, 2008 except back wages. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room. Announced in the open Court today this 16th day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 146/2012  
Date of Institution : 19.1.2012  
Date of Decision : 03.05.2013

Shri Hem Singh s/o Shri Roop Singh, r/o Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. . . . . .*Petitioner.*

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.  
*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Hem Singh S/O Shri Roop Singh, Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during February, 1997 to Year, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting nonavailability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to 30.9.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as work-charged beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It

is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent’s) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. The petitioner has retired from service in the month of January, 2011 on completion of 60 years of age. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya’s case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed. 4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of February, 1997 to the year, 2003 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part  
vide operative portion of the Award.

## REASONS FOR FINDINGS

### Issue No. 1

8. Shri Hem Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record no notice regarding willful absence from duty was ever served upon the petitioner. 10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 21.2.1997 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to December, 2003 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the nonavailability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 61 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

18. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

19. Not pressed.

## **Issue No. 3**

20. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

21. This issue is also decided in favour of the petitioner and against the respondent.

#### Issue No.4

22. Not pressed.

#### Relief (Issue No. 5)

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room. Announced in the open Court today this 3rd day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 126/2012  
Date of Institution : 06.1.2012  
Date of Decision : 02.05.2013

Shri Janak Singh s/o Shri Ram Chand, r/o Village Kholi-Jamthala, P.O. Lad- Bharol, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . .*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Janak Singh S/O Shri Ram Chand, Village Kholi-Jamthala, P.O. Lad-Bharol, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2003 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting nonavailability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.1.2003 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.1.2003 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division,

HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 2003. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2003 to August, 2007 is illegal and unjustified as alleged? . . .OPP
2. Whether the petition is not maintainable in the present form? . . .OPR
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR

## 5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Not pressed
Issue No. 3	: No
Issue No. 4	: Not pressed
Relief.	: Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No. 1**

8. Shri Janak Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Shri Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2003 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in February, 2003.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

20. Not pressed.

## **Issue No. 3**

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issue No. 4**

23. Not pressed.

#### **Relief (Issue No. 5)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room. Announced in the open Court today this 2nd day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 376/2009  
Date of Institution : 18.7.2009  
Date of Decision : 20.05.2013

Shri Jeewan Singh s/o Shri Duni Chand, r/o Village & P.O. Samote, Tehsil Bhattiyat,  
District Chamba, H.P. *. .Petitioner.*

*Versus*

The Executive Engineer, I.& P.H. Division, Dalhousie, District Chamba, H.P.  
*. .Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Jeewan Singh S/O Shri Duni Chand by Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 16-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of November, 1994 by the respondent. He worked as such up-to the month of November, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of November, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 16.11.2000, the principle of ‘last come first go’

was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . .OPP
2. Whether the petition is not maintainable in the present form? . . .OPR
3. Whether the petition is bad on account of delay and laches on the part of the petitioner. . .OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged? . . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part  
vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No.1

8. Shri Jeewan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice dated 12.10.2000 (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. R-2 is the copy of the notice dated 12.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 16.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 12.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh, through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passes by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 03.11.1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 16.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of

the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.27 of the list.

18. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of death of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 03.11.1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 27 of Ex. RW1/D.

20. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 3**

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issues No. 2, 4 and 5**

27. Not pressed.

#### **Relief (Issue no. 6)**

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 16.11.2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room. Announced in the open Court today this 20th day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 143/2012  
Date of Institution : 19.1.2012  
Date of Decision : 02.05.2013

Shri Joginder Singh s/o Shri Dharam Singh, r/o Village Manoh, P.O. Bassi, Tehsil Joginder  
Nagar, District Mandi, H.P. . . . . *Petitioner.*

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.  
. Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Joginder Singh S/O Shri Dharam Singh, Village Manoh, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1999 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 19.12.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 19.12.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of December, 1999. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent’s) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent’s) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of ‘last come first go’ was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner’s) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1999 to August, 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part  
vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No. 1**

8. Shri Joginder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even

now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.12.1999.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

#### **Issue No. 2**

20. Not pressed.

#### **Issue No. 3**

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issue No. 4**

23. Not pressed.

#### **Relief (Issue No. 5)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room. Announced in the open Court today this 2nd day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 226/2012  
Date of Institution : 01.5.2012  
Date of Decision : 15.05.2013

Shri Kanoru Ram s/o Shri Ganga Ram, r/o Village and P.O. Bayala, Tehsil Sunder Nagar,  
District Mandi, H.P.  
. .Petitioner.

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
. .Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Kanoru Ram S/O Shri Ganga Ram, R/O Village and P.O. Bayala, Tehsil Sunder Nagar, District Mandi, H.P. from time to time during Year, 1999 to December, 2010 and finally w.e.f. December, 2010 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as a daily waged worker on muster roll basis in the month of May, 1999. No appointment order/letter was issued in his name by the respondent/employer. He worked as such up-to the month of December, 2010 under the Range Officer, Kangoo Range. During the period of his employment, the Range Officer as per the directions of the respondent gave him the fictional breaks from time to time. Breaks were given with an idea that he (petitioner) does not complete 240 days of work in each and every calendar year of his engagement as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). In December, 2010, his services were finally terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was issued to him nor he was charge-sheeted. No inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of his termination the persons junior to him namely Sh. Mahendar and Sh. Ashish Kumar etc. were retained in service by the respondent. The juniors were not given the artificial breaks and allowed to complete more than 240 days of work in each and every calendar year of their employment. The juniors are now working on regular basis in the regular pay scale. He (petitioner) has been discriminated. The principle of ‘last come first go’ was not followed by the respondent. Funds and work were available with the respondent/department. He is/was not at fault. The period of fictional breaks is required to

be counted for the purpose of continuous service. The respondent indulged in unfair labour practice. He is entitled to the regularization of his services after the completion of 8-10 years of service as per the policy of the Government. His juniors have already been regularized. During the break period from the year 1999 to December, 2010 and after his final termination, he is/was not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- "(i) The Hon'ble Court may kindly be set aside the illegal breaks period w.e.f. 1999 to December, 2010 and directed to respondent to pay the back wages of break period and continuity of service with seniority.
- (ii) The Hon'ble Court may kindly be set aside the illegal final termination order w.e.f. December, 2010 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority with all other consequential service benefits and also directed to respondent to regularize the services of applicant from the date of junior have been regularized and also grant the pay scale and arrear to the applicant from the date of junior have been appointed along with all consequential benefits".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the claimant/petitioner.

On merits, it has been owned that the services of the petitioner were initially engaged in the month of May, 1999. However, it has been pleaded that the petitioner was appointed as a casual labourer to carry out various seasonal forestry works. During the period of his engagement no fictional breaks were provided to the petitioner. Even his services have not been retrenched as alleged. The petitioner worked intermittently every year. At the time of his engagement in the year 1999, he (petitioner) was duly made aware by the field staff that he (respondent) shall not be in a position to provide the work for the whole year. The petitioner was informed that his services shall be coterminous with the closure of the season. When the petitioner consented to the above noted terms and conditions of employment, his services were engaged for carrying out the seasonal activities in the forest department i.e. plantation, fencing and fire season etc. In the month of December, 2010, the petitioner worked for 15 days and, thereafter, did not report for his duties. He eventually abandoned the job. The petitioner used to work intermittently as per his sweet will and convenience in various seasonal forestry works. No person junior to the petitioner has been retained in service or engaged/re-engaged. Daily waged workers are called to work subject to the availability of the work and the funds by following the principle of 'first come last go'. Since the petitioner voluntarily left the job, he is precluded from claiming parity with the workmen who worked in continuity with him (respondent). As and when the petitioner approached to work, his services were duly engaged. The petitioner is not entitled to the regularization of his services as claimed. He is gainfully employed as an agriculturist. Since the petitioner left the service willingly, he is not entitled to any protection under the Act. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 27.9.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent from time to time during the year 1999 to December, 2010 is illegal and unjustified as alleged? . .OPP.
2. Whether the services of the petitioner have been wrongly and illegally terminated by the respondent w.e.f. December, 2010 as alleged? . .OPP
3. Whether the petition is not maintainable in the present form? . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: Yes
Issue No.2	: Yes
Issue No.3	: Not pressed
Issue No.4	: No
Relief.	: Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Kanoru Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that intentional breaks were not provided to him by the respondent and he abandoned the job. He owns the land and makes both the ends meet by doing the work of agriculture.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division, Sunder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. Ex. RW1/A is the affidavit submitted as per O 18 R4 CPC.

In the cross-examination, he admitted that Shri Hari Singh is junior to the petitioner. He also admitted that the workmen at serial No. 2 to 5 of the seniority list Ex. RW1/C are junior to the petitioner and are serving under him. He denied that he has given a phoney statement.

11. Ex. RW1/B is the mandays chart relating to the petitioner.

12. Ex. RW1/C is the mandays chart pertaining to Shri Mohinder and five other mazdoors working under the respondent.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a labourer in the month of May, 1999. The said fact finds support from the mandays chart Ex. RW1/B. The respondent has not placed on the file any document evidencing that the services of the petitioner used to be engaged for seasonal forestry works from time to time after duly intimating him as per the availability of the work and the budget.

14. The version of the petitioner is that from the date of his initial engagement to December, 2010, fictional breaks were provided to him by the respondent/department. This fact has been disputed by the latter. The respondent has pleaded that the petitioner, who was a casual labourer, used to work as per his sweet will and convenience in seasonal forestry works carried out by the department.

15. As already mentioned the respondent has not placed on the file any document to show that the petitioner was employed for carrying out the seasonal forestry works from time to time. Mandays chart Ex. RW1/C depicts that Shri Hari Singh etc., who are junior to the petitioner, were provided the work for more than 240 days in each and every calendar year by the respondent. If the respondent/department carries out only seasonal forestry works depending upon the availability of the work and the budget then why the persons junior to the petitioner were engaged for more than 240 days in a calendar year by the respondent? The reasons to that effect being obscure go to show that the respondent is telling nothing else except a bundle of lies. A person working for more than 240 days in a calendar year cannot be termed as a casual or seasonal worker. If the petitioner used to remain absent from duties time and again (as alleged), then why no show cause notice was issued to him by the respondent and no disciplinary proceedings were initiated against him (petitioner). No explanation on this count has been furnished by the respondent. The record highlights the discrimination perpetuated by the respondent. There is satiable evidence on the record to show that from the month of May, 1999 to December, 2010, artificial/fictional breaks were given to the petitioner by the respondent. The period of breaks is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act. The mandays chart Ex. RW1/B clarifies that work during some months was not provided to the petitioner by the respondent even for a single day. The non issuance of the muster roll in favour of the petitioner/workman without any fault on his part is nothing but unfair labour practice.

16. So far as the final termination of the services of the petitioner by the respondent in the month of December, 2010 is concerned, I will like to say that the respondent has taken the plea that the services of the petitioner were never disengaged. He left the job of his own accord and free volition.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was issued to the petitioner by the respondent calling upon him to resume his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. It has already been concluded by me that intentional breaks were wrongly and illegally given by the respondent to the petitioner from the month of May, 1999 to the month of December, 2010. The period of breaks is required to be counted for the purpose of continuous service as per Section 25-B of the Act. Therefore, by fiction of law, it can be easily said that the petitioner had completed 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date/month of his termination i.e. December, 2010.

19. Section 25-F of the Act postulates as under:—

“25-F. **Conditions precedent to retrenchment of workmen.**- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

20. There is not even an iota of evidence on the file to show that the provisions of the above quoted Section were complied with by the respondent before the retrenchment of the services of the petitioner.

21. Otherwise too, from the statement made by the respondent (RW1) coupled with the mandays chart Ex. RW1/C, it can be gathered that the persons junior to the petitioner are serving the respondent/department continuously. This indicates that the respondent has failed to adhere to the principle of ‘last come first go’. His action contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner is, thus, illegal and unjustified.

22. These issues are decided in favour of the petitioner and against the respondent.

### Issue No. 3

23. Not pressed

### Issue No. 4

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. While testifying in the Court as PW1, the petitioner has given his age as 43 years. In the cross-examination, he admitted that he earns his livelihood by doing the work of agriculture. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for the break period and after the final termination of his services.

27. This issue is also decided in favour of the petitioner and against the respondent.

### **Relief (Issue No. 5)**

28. As a sequel to my findings on the various issues above, the instant claim petition/reference succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner from the month of May, 1999 to December, 2010 are held to be artificial/fictional. The break period shall be counted for the purpose of continuous service. The final termination of the services of the petitioner by the respondent in the month of December, 2010 is set aside. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for the regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room. Announced in the open Court today this 15th day of May, 2013.

**RAJAN GUPTA**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 36/2011  
Date of Institution : 16-04-2011  
Date of Decision : 20-05-2013

Sh. Madan Lal s/o Shri Chunku Ram, r/o Village Bahi, P.O. & Sub Tehsil Padhar, District Mandi, H.P. . .Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division No.-1, Mandi, District Mandi, H.P. . .Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent. : Sh. Sanjeev Katoch, Dy.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Shri Madan Lal S/O Shri Chunku Ram daily wages workman by the Executive Engineer, H.P.P.W.D. Division No.-1, Mandi, District Mandi H.P. w.e.f. November, 2006 without serving any notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas persons junior to him have been retained by the employer, is legal and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“(i) That the respondent-employer is engaging average 100 of workman and are governed by the provisions of I.D. Act, 1947 and Rules in this behalf.

(ii) That the applicant was engaged as Beldar on Must Roll basis in the year 1993 and has completed 251 days in Calander year. The applicant was in continue service of the respondent-employer till 1996 and in the year 1997, applicant fell ill and medical certificate for 21 days was given in the office Assistant Engineer H.P.P.W.D. Sub-Division Padhar, but the same was illegally ignored by the respondent-employer.

(iii) That the applicant was in continues service of the respondent-employer and his service was intrepted because of illness without any fault on his part. The applicant was in continue service of the respondentemployer, till 2006. Thereafter the applicant again fell ill and has again submitted the medical to the Department/respondent-employer. But those medicals were not considered by the respondent-employer in view of the Section 25 B of I.D. Act, 1947. That the services of the applicant was illegally terminated/retrrenched by the respondent-employer. The applicant also filed an application on 7-10-2008 alongwith the medicals but the applicant was not engaged by the respondent-employer though applicant used to be present on the sight of work. In the month of October, 2008 it was told to the applicant that his services are terminated from October, 2008. The abovesaid termination of the applicant is illegal void and is in violation of the Mandatory Provisions of Industrial Disputes Act, 1947.

(iv) That the services of the applicant was illegally terminated-retrrenched by the respondent-employer. By way of victimasation, not in good faith, but in the colourable exercise of employer right, for patently false reason, on untrue and trumped allegations of willful absence, however applicant-workmen had deposited /submitted all the medicals issued by the competent Doctors with the respondent-employer. But all the medicals except few has been illegally ignored by the respondent-employer, which causes mis-carriage of justice, to the applicant workmen, the services of the applicant has illegally terminated to show

favouratism to other junior workman regardless of merit, the name of the junior person are Diwan Chand son of Title Ram, Man Singh son of Shri Saunu Ram, Man Chand son of Shri Palas Ram etc.

- (v) That the retrenchment /termination of the applicant is in utter disregard to the principle of natural justice. The medical certificate submitted by the applicant with the respondent –employer has been illegally ignored without serving any notice, without holding any enquiry and without complying the mandatory provisions of the Industrial Disputes Act, with malafide object to deprive the applicant-workmen to attain the status and preveliges of permanent workmen and also to give benefit of regularization to the other juniors. This action on the part of respondent-employer is unconstitutional, malafide, arbitrary, illegal and against the mandatory provisions of I.D. Act, 1947 and the Rules made in this Behalf. That the respondent employer has violated Section 25-B, G. & H. of the Industrial Disputes Act, 1947 hence present reference perforce.

#### RELIEF SOUGHT:—

3. It is, therefore, respectfully prayed that the illegal termination/retrenchment of the applicant from October, 2008 while the applicant had submitted a medical certificate may be declared null and void and the applicant be directed to engage continuously. That the period of the intrupted services may be directed to be treated continuous services for the purpose of seniority and regularization. The applicant further prayed that the medical certificate submitted by him may also be considered and period of illness may also be treated towards his continuous services and services of applicant be regularized as per the latest Policy of the Govt. in this behalf. The respondent-employer may also be directed to reinstate the applicant with back wages and with all consequential benefits in the interest of justice, for which the applicant shall ever pay.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. He has misrepresented himself and has approached the Court by concealing the material facts. The petition is hit by the vice of delay and laches. The claimant/petitioner is estopped by his act and conduct from filing the claim petition.

On merits, Paras 2 (i) to 2(v) of the reply are reproduced below verbatim for ready reference:—

“2(i) That the contents of this sub paras are admitted.

2(ii) That in reply to Para No 2(ii) of the claim petition, it is submitted that employer/employee relation of the respondent with that of applicant as daily wage beldar are not disputed. As a matter of fact the petitioner was initially engaged as a daily waged beldar w.e.f. 1/1993 in the National Highway Sub-Division Gumma HP PWD Gumma. The detailed mendays chart is being placed as Annexure-R-I. Thereafter the petitioner worked with the respondent No.1 the detailed mendays chart is being placed as Annexure –R-II. It is further submitted that in relation to the medical certificates for 21 days in the year 1997 w.e.f. 2-2-1997 to 22-2-1997. The applicant had not complied with the instructions of the State of H.P. being placed as Annexure-R-III. On the contrary vide letter dated 9/9/08 (copy attached

as Annexure-R-IV) the applicant had submitted the composite certificate spanning for the period in between 1997 to 2008, the medical certificate are being attached as Annexure R-V to R-XIII. Further except for the period 2/2/1997 to 22/2/1997 and 5/3/2001 to 31/3/2001 the rest of the medical certificates had been issued by a private practitioner. In addition to above during some of the days of which the applicant had submitted medical certificate vide letter No. dated 9/9/08, the applicant was on the muster rolls of the replying respondent and had also received the payment of the same. The details in this regard are being placed as Annexure R-XIV along with copies of relevant muster rolls discussed in the Annexure R-XII. The Muster Rolls are being placed as Annexure R-XV to R-XVII. Further the applicant was required to intimate the department regarding his illness immediately and was to report for duty along with medical fitness certificates duly issued by the Govt. hospital. The applicant on his part had failed to comply both the instruction of the department and had submitted the alleged medical certificates after the gap of many years of alleged illness. The production of medical certificates in the year 2008 some of which has been issued by Pvt. Practitioner as well as that the petitioner had worked for the periods for which he had submitted medical certificate causes doubt on the authenticity of the certificates. Thus the medical certificates so tendered by the applicant are fictitious without their being any illness on the part of the applicant and had been procured and manipulated by him to cover his unauthorized absence from duty. The applicant being intermittent worker was in the habit to be absent from duty as per his own will as such a break in service has resulted into the continuous service of the petitioner with the replying respondent and ultimately the applicant w.e.f. 16.11.2006 had abandoned his services with the replying respondents. It will not be out of place to mention here that in the year 1999, the applicant had separately submitted medical certificate for the absence of 74 days which has duly been accounted in the mendays of the petitioner for the year 1999. Annexed as Annexure R-I. Thus the petitioner was very much aware about the departmental instructions with regard to the medical certificates as there is no explanation on his part as to but had precluded him from submitting the medical certificate for the years/period for which he intends to claim benefit of continuation in service by submitting medical certificates vide his letter dated 9.9.08.

- 2(iii) That the contents of this sub-para are wrong hence denied. The detailed reply with regard to the medical certificate has already been given in para above. The facts and circumstances connected with the medical certificates are such that they have been procured at one go to cover the unauthorized absence without their being suffering any illness by the applicant as has been shown in the medical certificates. It is further submitted that w.e.f. 16-11-2006 the applicant had altogether discontinued to work with the replying respondent and eventually abandoned the job whereas the muster roll for whole of the month has been issued by the respondent office the copy of which is being placed as Annexure R-XVIII. In this regard a show cause notice on dated 24-09-2007 was issued to the applicant by the Assistant Engineer and was served to the applicant through Sh. Bhader Singh Work Inspector. However, the applicant had refused to receive the same. The copy of notice and report of Sh. Bhader Singh is placed as Annexure R-XIX. In addition to above vide endst. No. 3229-30 dated 18-8-2009, the applicant was again directed to present his case in a enquiry initiated by the respondent on account of submission of false medical certificate by the applicant vide letter dated 9-9-2008. The copy of letter is being placed as Annexure R-XX. However, no heed was paid by the applicant in this regard. The copy of the letter

along with endst. of the sub division as well as the abstract of dispatch register is being placed as Annexure R-XXI.

2(iv) That the contents of this sub para 2(iv) are wrong hence denied. A detailed reply has already been given in paras above. It is however further submitted that once a person gets engaged with a employer as per his own free will the rules and instructions of the employer governing the service conditions of his employees at large holds good for individual employee/ workman also. The rules/instructions are binding on each and every employee. Thus the stand of the respondent that the medical certificate are contrary to the instructions of State of H.P. discussed above as well as the Engineer-in-chief, HPPWD. Shimla letter No.PWE-133-11/96-ES-III-20091-20190 dated 11.11.1997 placed as Annexure R-XXII is justified and at the same time the applicant on his part had also failed to explain reasonably as to what had estopped him from submitting the medical fitness certificates duly obtained from the Govt. hospital from time to time particularly for the year/month when the applicant was on the rolls of respondent up to 11/2006 and had worked in the subsequent month then his absence. Moreover as per the instructions there is no provision of medical leave for daily paid labourers. The reasonable period of illness is only to be considered for continuity in service without wages. No retrospective grant of leave is allowed. Further the mendays of the workmen mentioned in this para are being placed as Annexure R-XXIII. However, the applicant is debarred from claiming parity with these workmen on account of his abandonment of work.

2(v) The contents of sub para 2(v) are wrong hence denied. A detailed reply has already been given in paras above. The applicant as per his service record had not completed the requisite criteria for his regularization as contained in the policy of state of HP for the regularization of its daily paid workmen. The applicant is suffering on account of his own defaults and is not entitled for any protection under Industrial Dispute Act 1947. It is further submitted that during the course of his employment with the replying respondent, the applicant had remained engaged in agriculture pursuits. According to which the applicant had remained a intermittent worker and had further left the job to take whole time job of agriculturist for his livelihood”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the medical certificates produced by him are/were fictitious. The period of absence due to the illness is required to be counted for the purpose of continuous service. He never abandoned the job and is senior to the other workers.

5. Per order dated 05.9.2012, following issues were struck:

1. Whether the services of the petitioner have been terminated by the respondent w.e.f. Nov., 2006 wrongly and illegally as alleged? . .OPP.

2. Whether the petitioner has a cause of action? . .OPP.

3. Whether the petition is not maintainable in the present form? . .OPR

4. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? . . .OPR
5. Whether the petition is bad on account of delay and laches on the part of the petitioner. If so, its effect? . . .OPR
6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . .OPR
7. Relief.
6. I have heard the ld. counsel for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No.2	: Yes
Issue No.3	: Not pressed
Issue No.4	: Not pressed
Issue No.5	: No
Issue No.6	: Not pressed
Relief	: Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. The petitioner Shri Madan Lal stepped into the witness box as PW1. In his affidavit Ex. PW1A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that in the month of November, 2006, the respondent refused to engage him wrongly and illegally. The copies of the medical certificates are Exts. PW1/C to G. His mandays chart is Ex. PW1/B.

In the cross-examination, he stated that he does not know that last muster roll No.336, the copy of which is Ex.R1, was issued in his name by the respondent and he worked up-to 16.11.2006 only. He admitted that the muster roll for the whole month was issued in his name by his adversary. He denied that he left the job voluntarily and his services were not disengaged by the respondent/department. He also denied that on 24.9.2007, Shri Bahadur Singh (Works Inspector) had approached him with a letter requesting him to join the duties since he (PW1) was absent. He denied that he refused to receive the said letter and did not report for duty despite being asked by Shri Bahadur Singh. No case regarding breaks in service or for the grant of leave on medical grounds has been filed by him. He admitted that the medical certificates were produced by him before the respondent/department per letter Ex. R2. The medical certificates Exts. R3 and R4 were handed over by him to the respondent/department. He denied that a wrong medical certificate Ex. R4 regarding the illness from 01.11.2006 to 31.12.2006 was furnished by him since he had worked for 16 days in the month of November, 2006. He also denied that a false medical certificate Ex. PW1/C from 02.2.1997 to 22.2.1997 was produced by him since during the said period, he worked on muster roll No.262, the copy of which is Ex. R5. He denied that the medical certificate Ex. PW1/D from 05.1.2001 to 28.1.2001 produced by him was false as during the said period, he worked on muster roll No.468, the copy of which is Ex. R6, and received the payment. Further, he refuted that a false medical certificate Ex. PW1/G from 06.8.2005 to 28.8.2005 was produced by him as during this period, he worked on muster roll No.247, the copy of which is Ex.R7, and

received the payment. He feigned ignorance about the fact that as per the instructions of the Government, only the medical certificates issued by the Government Medical Officer(s) are valid. He admitted that the majority of the medical certificates produced by him were issued by a private practitioner namely Dr. J.S. Kaundal. He admitted that in the year 1999, he had produced a medical certificate issued by the Government Hospital regarding his ailment and the medical leave without wages for 74 days was sanctioned in his favour by the respondent/department. He denied that the respondent had ordered an inquiry vide letter Ex.R8 regarding his illness and producing in one go the medical certificates. He even denied that despite the receipt of letter Ex.R8, he did not join the inquiry proceedings because of which no further action in the matter could be taken. He refuted that no person junior to him is serving the respondent/department as well as he cannot claim parity with Shri Diwan Chand and Shri Man Singh etc. as they served the respondent/department in continuity. He denied that to support the claim petition, he procured false medical certificates subsequently and then produced them before the respondent/employer. He makes both the ends meet by doing the work of agriculture. He denied that he has given a phoney statement.

9. Conversely, Sh. Arun Kumar Pathania, Executive Engineer, HPPWD, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he stated that the medical certificates produced by the petitioner were found false. He admitted that the persons junior to the petitioner are working under him. After the year 2006, the workmen were employed either on compassionate grounds or as per the orders of the Court. At the time of engaging new/fresh hands, a notice of reemployment was not given to the petitioner. He denied that the letter Ex. R8 was never forwarded to the petitioner.

10. RW-2 is Shri Bahadur Singh, Works Inspector. He deposed that in the year 2007, he was working as a Supervisor at Padhar. Letter Ex. RW1/G dated 24.9.2007 was handed over to him by the office for being delivered to the petitioner. He (RW-2) went alongwith the letter to the village of the petitioner. The latter met him and refused to receive the letter. Report Ex. RW1/H in this regard was made by him. Thereafter, the original of Ex. RW1/G was deposited by him (RW-2) in the office.

In the cross-examination, he stated that 10-12 houses are near to the house of the petitioner. He did not ask any neighbour of the petitioner to sign the letter as a witness to the effect that the petitioner refused to receive the same. He denied that he never visited the house of the petitioner and being an employee of the respondent/department, he is telling the lies.

11. Ex. RW1/B is the mandays chart relating to the petitioner. The same has been issued by the Assistant Engineer, National Highway Sub Division, HPPWD, Gumma, District Mandi. Initially the petitioner worked in the said Sub Division.

12. Ex. RW1/C is also the mandays chart relating to the petitioner issued by the Assistant Engineer, HPPWD Sub Division, Padhar. 13. Ex. RW1/D is the copy of a letter dated 20th June, 1996 written by the Financial Commissioner-cum-Secretary (IPH) to the Government of Himachal Pradesh. This letter was addressed to the Engineer-in-Chief of the Department. It was clearly mentioned in the letter that only those medical certificates would be entertained where daily waged workers have obtained the treatment from Government Hospitals or recognized clinics/hospitals as indoor patients.

14. Ex. RW1/E is the copy of the letter dated 19.6.1998 issued by the Himachal Pradesh Public Works Department. Per this letter, all the Executive Engineers etc. were directed to implement the decision of the Hon'ble Himachal Pradesh Administrative Tribunal in OA (D) No.258/1997 titled as Bishamber Dass versus State of H.P. under Section 25-B of the Act.

15. Ex. RW1/F is the detail regarding the payment received by the petitioner for the period for which he had submitted the medical certificates.

16. Ex. RW1/G is the copy of the letter dated 24.9.2007 written by the respondent to the petitioner calling upon him to resume his duties.

17. Ex. RW1/H is the copy of the report made by RW-2 on this letter to the effect that the petitioner refused to receive the same.

18. Ex. RW1/I is the copy of the despatch register. It reveals that the letter dated 12.8.2009 (Ex. R8) was sent by post by the respondent to the Assistant Engineer, HPPWD, Sub Division, Padhar. A copy of the letter was endorsed to the petitioner.

19. Ex. RW1/J is the copy of the letter dated 11.11.1997 written by the Engineer-in-Chief, HPPWD to all the Superintending Engineers etc. Vide this letter, clarification was issued regarding examination of leave cases on medical grounds of the daily waged workers for the purpose of seniority.

20. Exts. RW1/K to M are the month/year-wise working days in respect of Shri Diwan Chand, Shri Man Chand and Shri Man Singh, respectively.

21. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of January, 1993. The said fact finds support from the mandays chart Ex. RW1/B which is not in dispute.

22. No reference has been received from the appropriate Govt. regarding providing the artificial/fictional breaks, if any, to the petitioner by the respondent during the course of the employment. Even no reference has been received from the appropriate Govt. to the effect as to whether the period of medical leave during which the petitioner was allegedly suffering from some ailment(s) is required to be counted for the purpose of his seniority or not? It is an admitted fact that majority of the medical certificates produced by the petitioner were issued by a private medical practitioner. The respondent/department was not in a position to entertain them in view of the instructions issued per letter dated 20.6.1996, the copy of which is Ex. RW1/D. Moreover, from the evidence available on the record, it can be gathered that some of the medical certificates produced by the petitioner were found false as during the period of his alleged illness he worked and received the payment from the respondent/employer. The details of the payment received by the petitioner for the period for which he submitted the medical certificates is given in Ex. RW1/F. Taking into account the reference received from the appropriate Govt. and the provisions contained in Section 10(4) of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short), this Court/Tribunal is simply required to decide as to whether the services of the petitioner were wrongly and illegally disengaged in the month of November, 2006 or not?

23. The petitioner has maintained that in the month of November, 2006, his services were unlawfully terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner worked up-to 16.11.2006 and, thereafter, left the job of his own accord and free volition. Notice/letter dated 24.9.2007, the copy of which is Ex. RW1/G, was sent to the petitioner asking him to join his duties through Shri Bahadur Singh (RW-2). The petitioner refused to receive this letter as is evident from Ex. RW1/H i.e. the copy of the report made by RW-2.

24. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. So far as the letter Ex. RW1/G is concerned, there is no cogent

and convincing evidence on the record to show that the Works Inspector Shri Bahadur Singh (RW-2) had visited the house of the petitioner and the latter refused the receipt of notice/letter Ex. RW1/G. It is there in the statement of RW-2 that 10-12 houses are there in the vicinity of the house of the petitioner. If RW-2 had gone to the house of the petitioner and the petitioner refused the acceptance of Ex. RW1/G, then why Shri Bahadur Singh (RW-2) did not ask any neighbour of the petitioner to stand witness to the report Ex. RW1/H made by him? The reasons to that effect being obscure make the story in this respect put forth by the respondent sceptical.

25. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

26. The mandays charts Exts. RW1/B and C go to show that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are, thus, not attracted in this case.

27. During his cross-examination, the respondent (RW-1) admitted that the persons junior to the petitioner are serving under him. He also admitted that after the year 2006, the workmen were employed on compassionate grounds or as per the orders of the Court. At the time of their engagement, an opportunity of re-employment was not afforded to the petitioner. The admissions made by RW-1 make it crystal clear that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. Therefore, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

28. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

29. Taking into consideration my findings on issue No.1 above, it is held that the petitioner has a cause of action.

30. This issue is also decided in his favour.

## **Issues No. 3, 4 and 6**

31. Not pressed.

## **Issue No. 5.**

32. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“ The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone ”.*

33. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

34. While deposing in the Court as PW1, the petitioner has given his age as 48 years. In the cross-examination, he admitted that he earns his livelihood by doing the work of agriculture. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

35. This issue too is, decided in favour of the petitioner and against his opponent.

### **Relief (Issue No.7)**

36. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal retrenchment i.e. November, 2006 except back wages. Parties to bear their own costs.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Govt. for publication in the official gazette.

39. File after due completion be consigned to the Record Room. Announced in the open Court today this 20th day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Industrial Tribunal-cum-*  
*Labour Court, Dharamshala, H.P.*

### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 156/2011  
Date of Institution : 16.12.2011  
Date of Decision : 01.5.2013

Shri Makhan Singh s/o Shri Ram Kishan, r/o Village & P.O. Pubowal, Tehsil Haroli, Distt. Una, H.P. . *Petitioner.*

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Yogesh Kumar (Factory Manager)

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Makhan Singh S/O Sh. Ram Kishan, Village & P.O. Pubowal, Tehsil Haroli, Distt. Una w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 02.11.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition. On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent), the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the services of the petitioner nor any person junior to him has been retained in service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:-

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? . . .OPP.
2. If issue No.1 is proved in affirmative, whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? . . .OPP.
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No  
 Issue No.2 : No  
 Relief. : Claim petition dismissed  
                   vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Makhan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings, he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability he is telling the lies.

10. Since the petitioner has approached the Court for the grant of various relief(s), a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

11. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

12. In Ex. RW1/B i.e. the list of the employees as on 01.8.2012 furnished by the respondent, the name of the petitioner does not figure. The petitioner has not placed on the file any

document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

13. This issue is decided against the petitioner and in favour of the respondent.

## **Issue No. 2**

14. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

15. This issue is also decided against the petitioner.

## **Relief (Issue No. 3)**

16. As a sequel to my findings on issues No.1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room. Announced in the open Court today this 1st day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 141/2012  
Date of Institution : 19.1.2012  
Date of Decision : 03.05.2013

Shri Mohan Singh s/o Shri Lala Ram, r/o Village Jagehra, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Mohan Singh S/O Shri Lala Ram, Village Jagehra, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1997 to Year, 2004, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to 30.9.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant

01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.

(iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.

(iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of May, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year, 1997 to year, 2004 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Mohan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar. 11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an officer order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 21.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of May, 1997 by the respondent.

17. The mandays chart Ex. RW1/F clarifies that from the date of his initial engagement to December, 2003 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the nonavailability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent. 18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 50 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No.2**

21. Not pressed.

## **Issue No. 3**

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

**Issue No. 4**

24. Not pressed.

**Relief (Issue No. 5)**

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 139/2012  
Date of Institution : 19.1.2012  
Date of Decision : 02.05.2013

Shri Nek Ram s/o Shri Twaru Ram, r/o Village Kunkar, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Sharma, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Nek Ram S/O Shri Twaru Ram, Village Kunkar, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2000 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.1.2000 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.1.2000 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of October, 2000. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2000 to August, 2007 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—  
  
Issue No. 1 : Yes  
Issue No. 2 : Not pressed  
Issue No. 3 : No  
Issue No. 4 : Not pressed  
Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Nek Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2000 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.10.2000.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 54 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

20. Not pressed.

## **Issue No. 3**

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 4

23. Not pressed.

#### Relief (Issue No. 5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2013.

**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 154/2011

Date of Institution : 16.12.2011

Date of Decision : 01.5.2013

Shri Pardeep Singh s/o Shri Narinder Singh, r/o VPO Dulehar, Tehsil Haroli, Distt. Una,  
H.P. *..Petitioner.*

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla,  
Tehsil Haroli, Distt. Una, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Yogesh Kumar (Factory Manager)

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Pardeep Singh S/O Sh. Narinder Singh, VPO Dulehar, Tehsil Haroli, Distt. Una w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 15.10.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition.

On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent), the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the services of the petitioner nor any person junior to him has been retained in service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:—

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? ..OPR.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 

Issue No. 1 : No  
 Issue No. 2 : No  
 Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Pardeep Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. Self stated, he has the punching card. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment. He also denied that the punching card produced by him is forged.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings, he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability, he is telling the lies.

10. Ex. PW1/B is the identity card/punching card allegedly issued by the respondent in the name of the petitioner.

11. Since the petitioner has approached the Court for the grant of various relief(s), a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

12. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

13. In Ex. RW1/B i.e. the list of the employees as on 01.8.2012 furnished by the respondent, the name of the petitioner does not figure. So far as the alleged identity/punching card Ex. PW1/B is concerned, I will like to say that neither it bears the photograph of the petitioner nor

it has been signed by any official of the respondent evidencing that the same was issued in the name of the petitioner. Ex. PW1/B has also not been signed by any officer viz. Labour Inspector etc. Therefore, the alleged identity/punching card in no way comes to the rescue of the petitioner.

14. The petitioner has not placed on the file any document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

15. This issue is decided against the petitioner and in favour of the respondent.

## **Issue No. 2**

16. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

17. This issue is also decided against the petitioner.

## **Relief (Issue No. 3)**

18. As a sequel to my findings on issues No.1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 420/2009  
Date of Institution : 28.8.2009  
Date of Decision : 14.05.2013

Shri Parkash Chand s/o Shri Jai Ram, r/o Village Surpara, P.O. Samot, Sub Tehsil Sihunta,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.& P.H. Division, Dalhousie, District Chamba, H.P.  
*..Respondent.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Parkash Chand S/O Shri Jai Ram by Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 13-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the year 1996 by the respondent. He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of October, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 13.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

- Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : No

Issue No. 4 : Not pressed  
 Issue No. 5 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### Issue No. 1

8. Shri Parkash Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice dated 26.9.2000 (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He denied that the termination notice (Ex. R-3) was also served upon him by his adversary. Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Exts. R-2 and R-3 are the copies of the notices dated 26.9.2000 and 09.10.2000, respectively, served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-3 depicts that the services of the petitioner were disengaged w.e.f. 13.11.2000 (afternoon) due to the nonavailability of the work and the funds.

12. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

13. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh, through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

14. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

15. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 23.10.1995 by the respondent.

17. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 13.11.2000 (afternoon) after issuing the notice Ex. R-3. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.105 of the list.

18. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 23.10.1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 105 of Ex. RW1/D.

20. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. This issue is decided in favour of the petitioner and against the respondent.

### Issue No. 3

23. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issues No. 2, 4 and 5**

27. Not pressed

#### **Relief (Issue No. 6)**

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 13.11.2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 152/2011

Date of Institution : 16.12.2011

Date of Decision : 01.5.2013

Shri Pawan Kumar s/o Shri Faquir Chand, r/o VPO Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P.

*..Petitioner.*

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla,  
Tehsil Haroli, Distt. Una, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Yogesh Kumar (Factory Manager)

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Pawan Kumar S/O Sh. Faquir Chand, VPO Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 10.6.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition.

On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent), the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the services of the petitioner nor any person junior to him has been retained in service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:—

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? ..OPP.
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issue No. 1

8. Shri Pawan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings, he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability he is telling the lies.

10. Since the petitioner has approached the Court for the grant of various reliefs, a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

11. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

12. In Ex. RW1/B i.e. the list of the employees as on 01.8.2012 furnished by the respondent, the name of the petitioner does not figure. The petitioner has not placed on the file any document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

13. This issue is decided against the petitioner and in favour of the respondent.

## **Issue No. 2**

14. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

15. This issue is also decided against the petitioner.

## **Relief (Issue No. 3)**

16. As a sequel to my findings on issues No.1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 117/2012

Date of Institution : 06.1.2012

Date of Decision : 03.05.2013

Shri Pyar Chand s/o Shri Sukru Ram, r/o Village Basalan, P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
                               : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Pyar Chand S/O Shri Sukru Ram R/O Village Basalan, P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2001 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year, 2001. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from 2001 to 30.9.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2008 and 10 years of continuous service on 31.12.2010. As per the policy framed/approved in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as work-charged beldar w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act

and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act', for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 2001 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2011 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2011 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of April, 1998. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent’s) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent’s) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of ‘last come first go’ was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the

year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2001 to August, 2007 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? .. OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR,
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : No  
 Issue No. 4 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No.1

8. Shri Pyar Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

11. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Sumer Singh and nine other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of April, 1998 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the year 201 to August, 2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the year 2001 i.e. January, 2001 to August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 56 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

18. This issue is decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

19. Not pressed.

**Issue No. 3**

20. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004.

Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

21. This issue is also decided in favour of the petitioner and against the respondent.

**Issue No. 4**

22. Not pressed.

**Relief (Issue No. 5)**

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to August, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2001 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 155/2011

Date of Institution : 16.12.2011

Date of Decision : 01.5.2013

Shri Raj Kumar s/o Shri Bhagat Ram, r/o VPO Gondpur Bulla, Tehsil Haroli, Distt. Una,  
H.P. *..Petitioner.*

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Yogesh Kumar (Factory Manager)

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Raj Kumar S/O Sh. Bhagat Ram, VPO Gondpur Bulla, Tehsil Haroli, Distt. Una, w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 01.4.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition.

On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent) the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the

services of the petitioner nor any person junior to him has been retained in service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:—

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? ..OPP.
2. If issue No.1 is proved in affirmative whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? ..OPP.
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issue No. 1

8. Shri Raj Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. Self stated, he has the punching card. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment. He also denied that the punching card produced by him is forged.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings, he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability, he is telling the lies.

10. Ex. PW1/B is the identity card/punching card allegedly issued by the respondent in the name of the petitioner.

11. Since the petitioner has approached the Court for the grant of various relief(s), a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

12. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

13. In Ex. RW1/B i.e. the list of the employees as on 01.8.2012 furnished by the respondent, the name of the petitioner does not figure. So far as the alleged identity/punching card Ex. PW1/B is concerned, I will like to say that neither it bears the photograph of the petitioner nor it has been signed by any official of the respondent evidencing that the same was issued in the name of the petitioner. Ex. PW1/B has also not been signed by any officer viz. Labour Inspector etc. Therefore, the alleged identity/punching card in no way comes to the rescue of the petitioner.

14. The petitioner has not placed on the file any document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

15. This issue is decided against the petitioner and in favour of the respondent.

## **Issue No. 2**

16. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

17. This issue is also decided against the petitioner.

## **Relief (Issue No. 3)**

18. As a sequel to my findings on issues No. 1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 147/2012

Date of Institution : 19.1.2012

Date of Decision : 03.05.2013

Shri Rajan Kumar s/o Shri Relu Ram, r/o Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Rajan Kumar S/O Shri Relu Ram, Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during February, 1997 to Year, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to 30.9.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The

Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the

petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of February, 1997 to the year, 2003 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : No  
 Issue No. 4 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Rajan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

11. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

12. Ex. RW1/C is the copy of an officer order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 18.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of February, 1997 by the respondent. His actual date of engagement is 21/02/1997.

17. The mandays chart Ex. RW1/F clarifies that from the date of his initial engagement to December, 2003 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the nonavailability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he

is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

#### **Issue No. 2**

21. Not pressed.

#### **Issue No. 3**

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

#### **ISSUE NO.4**

24. Not pressed.

#### **Relief (Issue No. 5)**

25. As a sequel to my findings on issue No. 1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 383/2009

Date of Institution : 18.7.2009

Date of Decision : 20.05.2013

Shri Rakesh Kumar s/o Shri Jaisi Ram, r/o Village & P.O. Tundi, Sub Tehsil Sihunta,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *...Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rakesh Kumar S/O Shri Jaisi Ram by the Executive Engineer, I.& P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 30.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of October, 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of October, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Rakesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons, the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. R-2 is the copy of the notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh, through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 17.10.1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.106 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 17.10.1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 106 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000,

new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 3**

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

### **Issues No. 2, 4 and 5**

28. Not pressed

### **Relief (Issue No. 6**

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 09.11.2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 76/2012

Date of Institution : 06.1.2012

Date of Decision : 01.5.2013

Shri Rakesh Kumar s/o Shri Gurdial Singh, r/o Village & Post Office Mehandwani/  
Mehalwani, Tehsil Garhshankar, Distt. Hoshiarpur, Punjab. *..Petitioner.*

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla,  
Tehsil Haroli, Distt. Una, H.P. *.. Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Yogesh Kumar (Factory Manager)

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Rakesh Kumar S/O Sh. Gurdial Singh, Village & Post Office-Mehandwani/Mehalwani, Tehsil Garhshankar, Distt. Hoshiarpur, Punjab w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 20.7.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services

were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition.

On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent), the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the services of the petitioner nor any person junior to him has been retained in service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:—

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? ..OPP.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

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REASONS FOR FINDINGS

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**Issue No. 1**

8. Shri Rakesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings, he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability he is telling the lies.

10. Since the petitioner has approached the Court for the grant of various relief(s), a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

11. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

12. In Ex. RW1/B i.e. the list of the employees as on 01.8.2012 furnished by the respondent, the name of the petitioner does not figure. The petitioner has not placed on the file any document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

13. This issue is decided against the petitioner and in favour of the respondent.

**Issue No. 2**

14. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

15. This issue is also decided against the petitioner.

**Relief (Issue No. 3)**

16. As a sequel to my findings on issues No.1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 402/2009

Date of Institution : 18.7.2009

Date of Decision : 20.05.2013

Shri Raman Kumar s/o Shri Udham Singh, r/o Village & P.O. Tikri, Tehsil Bhattiyat,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Raman Kumar S/O Shri Udham Singh by the Executive Engineer, I.& P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 17.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of December, 1994 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to

terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of December, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 19.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : No  
 Issue No. 4 : Not pressed  
 Issue No. 5 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issue No. 1

8. Shri Raman Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. R-2 is the copy of the notice dated 17.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 19.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 17.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 13.12.1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 19.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.33 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and

their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 13.12.1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 33 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 3**

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

**Issues No. 2, 4 and 5**

28. Not pressed

**Relief (issue No. 6)**

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 19.11.2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 144/2012  
Date of Institution : 19.1.2012  
Date of Decision : 02.05.2013

Shri Ramesh Kumar s/o Shri Hira Lal, r/o Village Bharyara, P.O. Kuthera, Tehsil Joginder  
Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.  
..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Ramesh Kumar S/O Shri Hira Lal, Village Bharyara, P.O. Kuthera, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2000 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.3.2000 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.3.2000 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner

has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of March, 2000. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2000 to August, 2007 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : No  
 Issue No. 4 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Ramesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2000 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.3.2000.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

## Issue No. 2

20. Not pressed.

**Issue No. 3**

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

**ISSUE NO. 4**

23. Not pressed.

**Relief (Issue No. 5)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 1/2011  
Date of Institution : 26.2.2011  
Date of Decision : 20.05.2013

1. Smt. Rita Sharma w/o Shri Rattan Lal, r/o Village Soldha, Tehsil Sadar, Distt, Bilaspur, H.P.

2. Shri B.S. Verma, Vice President, INTUC H.P. State Near Water Tank, Kosarian Sector, Distt. Bilaspur, H.P.  
..Petitioner(s).

*Versus*

1. The Chairman, Sh. Sushil Pundir, Principal, SDMC, Mid Day Meal Committee, Sr. Sec. School Soldha, Distt. Bilaspur, H.P.

2. Sh. Shashi Verma s/o Sh. Ganga Ram, r/o Village Soldha, PTA Pradhan & Member SDMC, Sr. Sec. School Soldha, Distt. Bilaspur, H.P.

3. Sh. Sant Ram Kondal, President, Gram Panchayat Soldha, Member SDMC, Sr. Sec. School, Soldha, Distt. Bilaspur, H.P. ..Respondent(s).

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner(s) : Sh. S.S. Sippy, AR.

For the Respondent(s) : None/Already exparte

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

*“Whether verbal termination of Smt. Rita Sharma W/O Sh. Rattan Lal, Mid Day Meal Worker w.e.f. 03.12.2009 by the Chairman-cum-Principal S.D.M.C. Mid Day Meal Committee, Sr. Sec. School, Soldha, Distt. Bilaspur, (H.P.) without issuing any chargesheet & without conducting enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the above Employer?”*

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a Mid Day Meal Worker by the respondent in the Senior Secondary School, Soldha on 7th July, 2008. She worked as such up-to 02.12.2009 and completed more than 240 days of work in a block of 12 calendar months preceding the date of her retrenchment. On 03.12.2009, her services were terminated by the respondent without assigning any reason. Her work and conduct was satisfactory during the period of her employment. Before the disengagement of her services, neither any show cause notice was given to her nor she was charge-sheeted. The last pay drawn by her was Rs.400/- per month. At the time of retrenchment, the persons junior to her were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Not only this, after her termination, the respondent is regularly engaging new/fresh hands. She was not given an opportunity of re-employment. Her integrity has been made doubtful in the eyes of others by the respondent by his illegal and unjustified act. The respondent has also contravened the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). From the date of her termination, she is unemployed.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the illegal termination may kindly be set aside and the petitioner/workman may kindly be awarded reinstate in the service of the respondent management and that too with full back wages, seniority, continuity and with all incidental benefits and with costs throughout”.

3. On notice, the respondent appeared. He did not file any reply. Subsequently, the respondent absented from the Court because of which he was ordered to be heard exparte on 16.3.2012.

4. The petitioner Smt. Rita Sharma stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

5. Ex.P1 is the intimation dated 04.7.2008 given by the Principal of Soldha school to the petitioner. She was asked by the Principal to appear before the SDMC on 5th July, 2008 for her appointment/selection as a cook/assistant cook.

6. Ex. P2 is the certificate dated 6th December, 2009 issued by Smt. Shashi Thakur, Pradhan. It unfolds that the services of the petitioner were engaged as a cook in Mid Day Meal Scheme on 07.7.2008.

7. The deposition made by the petitioner (PW1) goes un-rebutted and unchallenged on the record. Keeping in view the same, it can be safely said that the respondent has contravened the provisions of Sections 25-F, 25-G and 25-H of the Act.

8. That being so, I have no hesitation to conclude that the services of the petitioner were wrongly and illegally terminated by the respondent.

9. While testifying in the Court as PW1, the petitioner has given her age as 36 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed. For these reasons, she is not entitled to the back wages.

10. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed exparte. The termination of the services of the petitioner by the respondent w.e.f. 03.12.2009 is set aside and quashed. The respondent is directed to reinstate her in service forth with. She shall be entitled to the seniority and continuity in service from the date of her illegal termination except back wages. Parties to bear their own costs.

11. The reference is answered in the aforesaid terms.

12. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

13. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 128/2012

Date of Institution : 06.1.2012

Date of Decision : 02.05.2013

Shri Rom Singh s/o Shri Bhagirath, r/o Village Speru, P.O. Drahal, Tehsil Joginder Nagar,  
District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.  
..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Rom Singh S/O Shri Bhagirath, Village Speru, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1998 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 04.12.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 04.12.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment

anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of December, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1998 to August, 2007 is illegal and unjustified as alleged? ..OPR.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### Issue No. 1

8. Shri Rom Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1998 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.1.1999.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 32 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

#### **issue No. 2**

20. Not pressed.

#### **Issue No. 3**

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### **Issue No. 4**

23. Not pressed.

#### **Relief (Issue No. 5)**

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 77/2012

Date of Institution : 06.1.2012

Date of Decision : 01.5.2013

Shri Surender Pal Singh s/o Shri Khushi Ram, r/o Village Sihwan, P.O. Kalewal (Beet),  
Tehsil Garhshankar, Distt. Hoshiarpur, Punjab. ..Petitioner.

*Versus*

The Factory Manager, M/s Saber Papers Limited, Village & Post Office Gondpur Bulla,  
Tehsil Haroli, Distt. Una, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Yogesh Kumar (Factory Manager)

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Surender Pal Singh S/O Sh. Khushi Ram, Village- Sihwan, P.O. Kalewal (Beet), Tehsil Garhshankar, Distt. Hoshiarpur, Punjab w.e.f. 12.8.2010 by the management of M/s Saber Papers Limited, Village & Post Office Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. without issuing charge sheet, without conducting enquiry, without paying compensation and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, compensation & other service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as an unskilled worker/helper w.e.f. 01.5.2009 by the respondent. He continuously worked as such up-to 12.8.2010 (afternoon) as well as completed 240 days of service in each and every calendar year of his employment. His salary was Rs.3300/- per month. During the period of service, no complaint was received against him. On 12th August, 2010, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Even an inquiry was not conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. No seniority list has been maintained by the respondent. The respondent/factory is extending day by day. There is no reduction in the volume of work. After his disengagement, new/fresh hands have been recruited by the respondent. Not only this, the persons junior to him have been retained in service by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the retrenchment order dated 12.8.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the gist of the instant industrial dispute as per the notification is not applicable to the present claim petition.

On merits, it has been denied that the services of the petitioner were engaged as an unskilled worker/helper. In fact, the petitioner never worked in any capacity with him (respondent). Since the petitioner never served under him (respondent), the question of the termination of his services in an unlawful manner does not arise. The claim petition has been instituted simply to harass him (respondent). Neither any new/fresh hands have been engaged after the alleged termination of the services of the petitioner nor any person junior to him has been retained in service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. No relationship of master and servant exists between the parties.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 02.07.2012, following issues were struck:—

1. Whether the relationship of employer and employee/workman exists between the parties as alleged? ..OPP.
2. If issue No.1 is proved in affirmative whether the services of the petitioner have been terminated by the respondent wrongly and illegally as alleged? ..OPP.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1

8. Shri Surender Pal Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had moved an application before the respondent for employment. The copy of that application is not with him. He cannot produce any record to show that he had served the respondent. Self stated, he has the punching card. He denied that he never worked under the respondent and has instituted a phoney petition to gain the employment. He also denied that the punching card produced by him is forged.

9. Conversely, Shri Yogesh Kumar Sharma, Factory Manager (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that during the conciliation proceedings he had admitted before the Labour Inspector, Una that the services of the petitioner were engaged in the factory through a contractor. He denied that the petitioner served under him and to escape the liability, he is telling the lies.

10. Ex. PW1/B is the identity card/punching card allegedly issued by the respondent in the name of the petitioner.

11. Since the petitioner has approached the Court for the grant of various relief(s), a duty is cast upon him to show that the relationship of employer and employee exists between the parties.

12. No co-worker has been examined by the petitioner to substantiate his claim. The bald statement made by the petitioner (PW1) to the effect that his services were engaged (as claimed) by the respondent cannot be taken as a gospel truth.

13. In Ex. RW1/B i.e. the list of the employees as on 01/8/2012 furnished by the respondent, the name of the petitioner does not figure. So far as the alleged identity/punching card Ex. PW1/B is concerned, I will like to say that neither it bears the photograph of the petitioner nor it has been signed by any official of the respondent evidencing that the same was issued in the name of the petitioner. Ex. PW1/B has also not been signed by any officer viz. Labour Inspector etc. Therefore, the alleged identity/punching card in no way comes to the rescue of the petitioner.

14. The petitioner has not placed on the file any document to show that he was paid the salary by the respondent at any point of time. There is no cogent and convincing evidence on the record to show that the relationship of employer and employee/workman exists between the parties. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

15. This issue is decided against the petitioner and in favour of the respondent.

## **Issue No. 2**

16. Taking into account my findings on issue No.1, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally terminated by the respondent.

17. This issue is also decided against the petitioner.

## **Relief (Issue No. 3)**

18. As a sequel to my findings on issues No.1 and 2 above, the claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 374/2009

Date of Institution : 18.7.2009

Date of Decision : 20.05.2013

Shri Surinder Singh s/o Shri Punjab Singh, r/o Village Khanora, P.O. Tundi, Tehsil  
Bhattiyat, District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I& PH Division, Dalhousie, District Chamba, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Surinder Singh S/O Sh. Punjab Singh by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 11/2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of November, 1994 by the respondent. He worked as such up-to the year, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the

labourers who have been engaged after his termination are S/Sh. Pawan Kumar and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of June, 1994. His mandays chart is annexure RI. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 19.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Issue No. 3 : No  
 Issue No. 4 : Not pressed  
 Issue No. 5 : Not pressed  
 Relief : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No. 1**

8. Shri Surinder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons, the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice dated 17.10.2000 (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He denied that the termination notice (Ex. R-3) was also served upon him by his adversary. Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. R-2 is the copy of the notice dated 17.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 19.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 17.10.2000 worth Rs.4890/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of June, 1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 19.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.328 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is June, 1995. There is nothing on the record to show that the deceased husbands of Smt.

Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 414 and 435 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 328 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of reemployment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 3**

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

### **Issues No. 2, 4 and 5**

28. Not pressed

**Relief (Issue No. 6)**

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. on 19/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 24/2011  
Date of Institution : 31.3.2011  
Date of Decision : 20.05.2013

Smt. Tara Devi w/o Shri Roop Singh, r/o Village Jamthal, Tehsil Sadar, Distt. Bilaspur,  
H.P. ..Petitioner.

*Versus*

The Principal, D.A.V. Public School, NTPC Township, Jamthal, Distt. Bilaspur, H.P.  
..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Anil Sharma, Adv.  
For the Respondent : Sh. R.K. Raghu, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination from service w.e.f. 15.12.2009 of Smt. Tara Devi W/O Sh. Roop Singh, Aya by the Principal, D.A.V. Public School, NTPC Township, Jamthal, Distt. Bilaspur, H.P., without serving notice and without holding enquiry and without complying with the provisions under The Industrial Disputes Act, 1947, as alleged in the Demand Notice, is legal and justified? If not, to what back wages, service benefits and relief Smt. Tara Devi W/O Sh. Roop Singh is entitled to from the concerned management?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as an Aya/Mid-day Meal Worker by the respondent in the month of September, 2008. She was drawing the wages @ Rs.3000/- per month. CPF amounting to Rs.400/- each month was being deducted from her salary by the respondent/employer. She continuously worked as such up-to 14.12.2009. On the next day i.e. 15.12.2009, her services were terminated by the respondent by a verbal order. Before the termination of her services, neither any notice was given to her nor the retrenchment compensation was paid. Neither any reason was assigned by the respondent for the termination of her services nor she was charge-sheeted. During the period of her employment, her work and conduct was excellent. No explanation for any misconduct was called by her superiors. She had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. At the time of her retrenchment, the persons junior to her were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. The respondent/school is still functioning. After her (petitioner’s) termination, the respondent is regularly engaging the workers. Her seniority has been ignored. The action of the respondent has made her integrity doubtful in the eyes of others. From the date of her disengagement, she is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 15.12.2009 be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner is estopped from filing the petition by her act and conduct. She has suppressed the material facts from the Court and has not approached the Court/Tribunal with clean hands. The petitioner has no cause of action and locus standi to sue in view of the fact that her appointment was contractual. The petition is bad for non-joinder of the necessary party i.e. the management of the school.

On merits, it has been owned that the services of the petitioner were engaged as an Aya in the month of September, 2008. Last wages drawn by her were Rs.3,000/- consolidated. Rs.360/- per mensem were being deducted by the management from the salary of the petitioner towards the CPF. It has been denied that the petitioner continuously worked up-to 14/15.12.2009 as claimed. The petitioner was appointed w.e.f. 4<sup>th</sup> September, 2008 for 89 days for the academic session 2008-2009. She was relieved on 31.3.2009. Thereafter, she was re-engaged on 23.4.2009 for 89 days and relieved on 17.7.2009. The copy of the attendance register for the academic sessions 2008-2009 and 2009-2010 is attached as annexure R-1. Relieving orders dated 31.3.2009 and 17.7.2009 are annexures R-2 and R-3. After 17.7.2009, the petitioner never remained on the rolls of the school. She did not join her duties despite the memorandum signed by her, in which she was asked to report for duty w.e.f. 17.8.2009 to 31st March, 2010. The terms and conditions of the memorandum (annexure R-4) were duly explained to the petitioner. She signed the same after accepting the terms and conditions of her appointment. The petitioner failed to report for duty in accordance with the memorandum annexure R-4. When she (petitioner) did not join the institution, he (respondent)

appointed another lady namely Smt. Saroj Devi in the month of October, 2009. The services of the petitioner were never terminated as alleged. She herself failed to report for duty as per annexure R-4 and did not intimate him (respondent) any reason for not joining her duties. An Aya is required to run the institution. He (respondent) was left with no option but to ask the management to appoint Smt. Saroj Devi in place of the petitioner. The appointment of the petitioner was contractual. Smt. Saroj Devi is still working under him (respondent) on contract basis. The petitioner did not work for 240 days or more as claimed. No person junior to her has been retained in service or engaged/re-engaged. The provisions of Section 25-B of the Act are not attracted in this case. A false story has been concocted by the petitioner to mislead the Court. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the claim petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 06.9.2012, following issues were struck:
  1. Whether the services of the petitioner have been terminated w.e.f. 15.12.2009 by the respondent wrongly and illegally as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..OPR.
  4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
  5. Whether the petition is bad for non-joinder of the necessary parties as alleged? ..OPR.
  6. Whether the petitioner has a cause of action? ..OPP.
  7. Whether the petitioner has locus standi to sue? ..OPP.
  8. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No  
 Issue No. 2 : Yes  
 Issue No. 3 : Yes  
 Issue No. 4 : Yes  
 Issue No. 5 : Not pressed  
 Issue No. 6 : No  
 Issue No. 7 : No  
 Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No. 1**

8. The petitioner Smt. Tara Devi stepped into the witness box as PW1. She reiterated on oath the contents of the petition/statement of claim in its entirety. She also stated that in the month of July, 2009, the vacation was there in the school. She was in the family way and delivered a female child on 13.9.2009. Due to the pregnancy and the birth of the child, she could not join her duties. She moved an application before the Principal (respondent) for the grant of leave. On 15/12/2009, when she went to the school, the respondent did not allow her to work. Smt. Saroj had been employed as an Aya in her (PW1's) place.

In the cross-examination, she admitted that she worked as an Aya in the school up-to July, 2009. She admitted that the management of the school had taken an interview on 22.6.2009 for the appointment of the Aya. She took part in the interview and was selected. She was required to join the duty on or before 17.8.2009. She admitted that the memorandum Ex. R1 bears her signatures. She even admitted that she did not join her duties on 17.8.2009 or prior to it. She denied that she did not give any information to the respondent/school for not joining the duties on or before the given date. Self stated, she had intimated the school authorities who remarked that she can send someone else in her place. Such information was submitted by her in writing. The copy of that information has not been produced by her in the Court. She denied that she failed to join the duty and her services were never disengaged by the respondent. She also denied that to get the employment in an unlawful manner and to grab the money, she has instituted a phoney petition.

9. Conversely, Principal, Shri R.L. Pathak (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the petitioner worked only up-to 17.7.2009. He denied that the petitioner had moved an application that she is unable to come to the school as she has delivered a baby. He refuted that on 15.12.2009, when the petitioner visited the school, she came to know that her services have been dispensed with.

10. Ex. RW1/B is the copy of the memorandum issued by the Manager of the respondent/school in the name of the petitioner. It corresponds to Ex. R1. The perusal of this document discloses that on the basis of an interview held on 22.6.2009, the petitioner was appointed as an Aya in the school up-to 31st March, 2010 on payment of the consolidated salary of Rs.3,300/- per month. She (petitioner) was required to report for duty on or before 17.8.2009. The terms and conditions of appointment were duly accepted by the petitioner. She under-took to join the duty on or before the stipulated date as directed. The memorandum bears the signatures of the petitioner.

11. Ex. RW1/C is the copy of the Ad-hoc selection committee meeting resolution dated 22.6.2009. It depicts that the petitioner was selected for being appointed as an Aya on temporary basis in the school.

12. Ex. RW1/D is the copy of the letter dated 18.7.2009 written by the respondent to Sh. M.L. Aeri, Director (Colleges) DAV College Managing Committee, Chitra Gupta Road, Pahar Ganj, New Delhi. Vide this letter, a request was made to grant approval for Ad-hoc selection committee meeting resolution passed on 22.6.2009.

13. In the claim petition, the petitioner has nowhere pleaded that she could not join her duties on or before 17.8.2009 as per the terms and conditions detailed in the memorandum Ex. R1 (corresponding to Ex. RW1/B) as she was pregnant and delivered a child. Even she has nowhere

pleaded that she had moved an application before the respondent for the grant of leave as she was unable to join her duties due to the aforesaid reasons. The deposition made by the petitioner (PW1) to this effect being beyond her pleadings cannot be read.

14. From the evidence available on the record coupled with the relieving orders dated 31.3.2009 (Annexure R-2) and 17.7.2009 (Annexure R-3), it can be gathered that the petitioner worked as an Aya in the school at two occasions for 89 days each i.e. from 04.9.2008 to 31.3.2009 (afternoon) and 20.4.2009 to 17.7.2009 (afternoon). She did not work continuously as claimed up-to 14/15 December, 2009. The petitioner did not serve for 240 days or more in a block of 12 calendar months anterior to the date of her alleged termination. The provisions of Section 25-F of the Act are not attracted in this case.

15. Otherwise too, it is an admitted fact that an interview for the post of Aya was held by the school management on 22.6.2009. The petitioner took part in the interview and was selected for being appointed as an Aya on temporary basis up-to 31st March, 2010 on payment of the consolidated monthly salary of Rs.3,300/-. At the cost of reiteration, I will like to add that as per the memorandum Ex. R1 the petitioner was supposed to join her duties on or before 17.8.2009 which she failed to do. Since the petitioner failed to report for duty as undertaken/directed, I am at a loss to understand as to how it lies in her mouth to say that her services were wrongly and illegally terminated by the respondent by a verbal order? The respondent was well within his right to appoint an Aya in place of the petitioner to run the institution as she (petitioner) failed to join her duties without any intimation to the respondent/management.

16. The facts and circumstances of this case go to show that no provision of the Act has been contravened by the respondent.

17. It appears to me that the avarice of the petitioner to grab the job and money has forced her to file a totally false and baseless claim. She is not entitled to any protection under the Act. 18. This issue is decided against the petitioner and in favour of the respondent.

#### **Issues No. 2 to 4, 6 and 7**

19. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

20. Taking into account my findings on issue No.1, it is held that the petitioner has no cause of action. She has no locus standi to sue. The claim is not maintainable in the present form. The petitioner is estopped from filing the petition by her act and conduct. She has certainly not approached the Court with clean hands. The petitioner has made false averments suiting to her hallucination with an ulterior motive.

21. These issues are also decided against the petitioner and in favour of her opponent.

#### **Issue No. 5**

22. Not pressed.

#### **Relief (Issue No. 8)**

23. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 278/2012

Sh. Satish Kumar s/o Sh. Gurdass Ram, r/o Village and P.O. Dulehar, Tehsil Haroli, District Una, H.P. *..Petitioner.*

*Versus*

The Managing Director, M/S Addinath Rubbers Private Limited, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. *..Respondent.*

18-04-2013 Present: None for the petitioner.  
Sh. R.K. Bhardwaj, Adv. csl. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner/claimant. He (petitioner) is absent despite knowledge. It is 2.50 P.M. Even no PW is present despite the grant of the 3rd and last opportunity. The perusal of the file discloses that till date the petitioner/claimant has neither filed any list of witnesses nor taken the steps to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for leading the evidence. His evidence is, accordingly, closed by the order of the Court. The act and conduct of the petitioner goes to show that he is not interested to pursue the matter. Consequently, he is not entitled to any relief. The claim petition preferred by him (petitioner) is dismissed for want of evidence. The termination of the services of the petitioner by the respondent during the month of September, 2010 is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

Ref: No. : 292/2012

..Petitioner.

*Versus*

*..Respondent.*

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Dharamshala, H.P

## Ref: No. : 06/2013

..Petitioner.

1. Principal Chief Conservator of Forest, Shimla, Himachal Pradesh.

2. Conservator of Forest, Kullu Distt. Kullu, H.P.
3. Division Forest Officer, Keylong Distt. Lahaul & Spiti H.P.

..Respondents.

30-04-2013 Present: None for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondents.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner/claimant. He and his ld. csl. are absent despite knowledge. It is 3.00 P.M. Even no PW is present. No list of PWs has been furnished by the petitioner. Ld. D.D.A. for the respondents states at bar that as per information received by him, the petitioner is not interested to pursue the matter since he has already been reengaged as a driver by the respondents.

Such being the situation, I have no hesitation to conclude that the petitioner is not entitled to any relief. The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondents on 26-12-2009 is held to be legal and justified. Parties to bear their own costs. The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 39/2012

Smt. Rani Devi w/o Sh. Balbir Singh, r/o Village Tarun, P.O. Samour, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD (B&R) Division Dharampur, Distt. Mandi, H.P.

..Respondent.

02-05-2013 Present: Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

File taken up today on request.

2. Ld. csl. for the petitioner/claimant has made the below given statement in the Court:—

“ Reference No. 39/2012 titled as Smt. Rani Devi-vs-Executive Engineer, HPPWD Division Dharampur is pending before this Court and is listed for 23-05-2013. My client

was retrenched in the year 2000 instead of 08-07-2005 i.e. date of retrenchment given in the reference. For this reason, my client will issue a fresh demand notice to the respondent for the redressal of her grievances. I do not want to proceed with the Ref. No. 39/2012 . The claim petition in the said reference be dismissed as withdrawn. The file of reference No. 39/2012 be taken up today and disposed of.”

In view of the above statement, the claim petition is dismissed as withdrawn. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

**Rajan Gupta,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 136/2012

Sh. Kishan Singh s/o Sh. Shesh Ram Alias Makoru Ram, r/o Village Arthi, P.O. & Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH, Division Padhar, Distt. Mandi, H.P.

*..Respondent.*

03-05-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for arguments today but the ld. csl. for the petitioner/claimant has made the below given statement in the Court:—

“ The services of my client were finally terminated by the respondent on 01-01-2001. No reference regarding the final termination has been received from the appropriate government. For this reason, my client will issue a fresh demand notice to the respondent for the redressal of his grievances. I do not want to proceed with the instant reference/claim petition. It be dismissed as withdrawn.”

2. Ordered accordingly. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref: No. : 45/2011

Sh. Om Prakash s/o Sh. Bali Ram, r/o Village & P.O. Mahadev, Tehsil Sunder Nagar, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Project Manager, L & T Ltd. (ECC Division), behind Shahid Gurdass Singh Petrol Pump, VPO Mahadev, Tehsil Sunder Nagar, Distt. Mandi, H.P.

..Respondent.

08-05-2013      Present:      Petitioner with Sh. R.S. Rana, Adv.  
Sh. A.K. Chatturvedi, Project Accountant for the respondents  
with  
Sh. K.S. Guleria, Adv.

The parties have compromised. Statements recorded separately.

The claimant/petitioner Sh. Om Prakash has made the below given statement in the Court:—

“ मेरा प्रतिवादीगण से समझौता हो गया है। समझौता अनुसार मैंने सारे बकाया पैसे प्रतिवादी से उसके अधीन सुन्दरनगर या सोलन आदि जगह पर काम करने के लिए बजरिया cheque बसूल पा लिए हैं। उस चैक की कापी Ex. P-X है। चैक encash होने के बाद मेरा प्रतिवादीगण के खिलाफ किसी किस्म का कोई claim बकाया न रहेगा। मैं मौजूदा औद्योगिक विवाद न चलाना चाहता हूं। दाखिल दफ्तर किया जावे।”

2. Ld. csl. for the respondents has recorded his satisfaction to the above statement. The bankers cheques Exs. D-3 and D-8 are ordered to be returned to an Authorised Officer/counsel for the respondents as per the Rules against receipt after retaining their Photostat copies on the record. The respondents will be at liberty to get the bankers cheques encashed.

3. In view of these facts, this reference/claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. File after completion be consigned to the Records.

Announced:

**Rajan Gupta,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 238/2012

Sh. Ravinder Kumar Sharma s/o Sh. Narain Dass Sharma, r/o Village Kakadan, P.O. Jangal, Tehsil Jaisinghpur, Distt. Kangra, H.P.

*..Petitioner.*

*Versus*

The Principal, D.A.V. Public School, Alampur, Tehsil Jaisinghpur, District Kangra, H.P.

*..Respondent.*

13-05-2013 Present: Petitioner with Sh. N.L. Kaundal, A.R. and Sh. Vijay Kaundal, Adv.  
Sh. Bikram Singh, Principal of the respondent school with  
Sh. Rajinder Ghogra, Adv.

The case is listed for the evidence of the respondent today, but the parties have compromised. Principal, Sh. Bikram Singh has made the below given statement in the Court today:—

“ We are ready to reengage the services of the petitioner on the same terms and conditions on which he was working earlier. The petitioner should report for duty on 19-08-2013 at 8. O'clock in the school. The petitioner was working with us as a driver. As and when the services of the drivers are regularised by us, the case of the petitioner shall be duly considered for regularisation by giving him the benefit of due seniority and continuity in service from the date of initial engagement i.e. 01-04-2007. The claim petition may be allowed in the aforesaid terms. The petitioner shall not be entitled to any back wages.”

2. The petitioner/claimant and his ld. csl. have recorded their satisfaction to the above noted statement.

3. The claim petition is disposed of in the aforesaid terms as compromised. Parties to bear their own costs.

4. The reference is answered in the abovesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 329/2012

Smt. Kaushlya Devi w/o Shri Rikhi Ram, r/o Village Laharana, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

24-05-2013 Present: Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

Today again no PW is present despite the grant of third and last opportunity. Ld. csl. for the petitioner prays for more time for leading the evidence on the ground that his client has not come to the Court today being unwell. The same is opposed. No OPD slip/ medical certificate in support of illness (as claimed) has been produced. As already mentioned, this is the third and last opportunity afforded to the petitioner for leading the evidence which she has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the claimant/petitioner more time to lead the evidence. Her evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has not adduced any evidence in support of her claim. I have no hesitation to conclude that she is not entitled to any relief. No artificial/fictional breaks were provided to the petitioner by the respondent during the month of February, 1999 to 31-08-2007. The claim petition is dismissed for want of evidence. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 335/2012

Smt. Sakina Devi w/o Shri Roshan Lal, r/o Village Namelry, P.O. Gangoti, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

24-05-2013 Present: Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

Today again no PW is present despite the grant of third and last opportunity. Ld. csl. for the petitioner prays for more time for leading the evidence on the ground that his client has not come to the Court today being unwell. The same is opposed. No OPD slip/ medical certificate in support of illness (as claimed) has been produced. As already mentioned, this is the third and last opportunity afforded to the petitioner for leading the evidence which she has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the claimant/petitioner more time to lead the evidence. Her evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has not adduced any evidence in support of her claim. I have no hesitation to conclude that she is not entitled to any relief. No artificial/fictional breaks were provided to the petitioner by the respondent during the month of September, 1999 to 31-08-2007. The claim petition is dismissed for want of evidence. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

**Rajan Gupta,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: 444/2009

Sh. Bhuru s/o Sh. Gasoni, r/o Village Sogi, P.O. Sachani, Tehsil & Distt. Kullu (H.P.)

*..Petitioner.*

*..Respondent.*

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.